The respondents, as they were entitled to do, challenged the legality of the seizure by bringing an action against the appellant, the Commissioner of Trade and Customs. And so far they have been successful in the contest. The Judge of first instance, holding that the respondents "had acted innocently," made a declaration that the goods seized were not liable to forfeiture. The Court of Appeal by a majority of four to one has affirmed the order.

The question depends upon the true construction of Part IV. of "The Patents, Designs, and Trade-marks Act, 1889," which reproduces the provisions of the Imperial statute known as "The Merchandise Marks Act, 1887."

The most important sections in the colonial Act are sections 89 and 104, corresponding with sections 2 and 16 of the Imperial Act. Subsection (1) of section 89 deals with the forgery of trade-marks and the application to goods of any false trade description. It declares that, subject to the provisions of the Act, an offence against the Act is committed by such forgery or application unless the party charged "proves that he acted without intention to defraud." Subsection (2) enacts that every person who sells any goods to which any false trade description is applied is guilty of an offence against the Act unless he proves (*a*) that, "having taken all reasonable precautions against committing an offence" against the Act, he had no reason to suspect the genuineness of the trade description; and (*b*) that on demand duly made he gave all information in his power with respect to the persons from whom he obtained such goods; or (*c*) "that otherwise he had acted innocently." Subsection (3) enacts that every person guilty of an offence against this Part of the Act is liable on conviction to imprisonment or fine, or to both, and "in any case to forfeit to Her Majesty every chattel, article, instrument, or thing by means of or in relation to which the offence has been committed."

Section 104, so far as material, is in the following terms: "Whereas it is expedient to make further provision for prohibiting the importation of goods which if sold would be liable to forfeiture under this Part of the Act: Be it therefore enacted as follows: (1.) All such goods" (and also all foreign goods bearing the name or trade mark of a British trader, unless accompanied by a definite indication of origin) "are hereby prohibited to be imported into the colony, and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section sixty-six of 'The Customs Laws Consolidation Act, 1882.' . . . (8.) This section shall have effect as if it were part of 'The Customs Laws Consolidation Act, 1882.'"

The Act of 1882 authorises the seizure and forfeiture of all goods the importation of which is prohibited by law.

The contention of the respondents throughout has been that their innocence protects their goods. The argument is that no goods are liable to forfeiture unless an offence against the Act has been committed, and that there can be no offence against the Act where the party charged is in a position to prove that he has "acted innocently."

Their Lordships do not stop to inquire whether in a case like the present, where the false trade description is stamped on the goods, or the boxes containing the goods, it is competent for the party charged to give the go-by to the specific requirements of (*a*) and (*b*), and to shelter himself under the looser and more general language of (*c*), or whether—as seems to have been in Coppen *v.* Moore (1898, 2 Q.B. 306), a case of great importance and no little authority—the person charged can only resort to (*c*) when the false trade description is not affixed to the goods themselves, but has been used upon the occasion and as part of the terms of sale. Whatever may be the true view on this point, their Lordships assume, for the purposes of this judgment, that if the goods in question in the present case had been sold on arrival the respondents could not have been convicted of an offence against the Act.

What then is the meaning of section 104? It is certainly awkwardly expressed. It follows the language of section 89, but not so closely as necessarily to confine prohibition to the case in which liability to forfeiture is declared in the earlier section. There is at any rate one difference between the two sections not without significance. Section 104 deals with things, not with persons. It speaks of goods liable to forfeiture, not of traders liable to have their goods forfeited. Still, no doubt, on a narrow and literal construction of the words of the preamble, if the scope and object of the Act be disregarded, it is possible to arrive at the conclusion that no goods are to be treated as contraband unless an offence against the Act has been committed, and has been followed by conviction. But this construction obviously makes the scheme of prohibition unworkable, and the enactment itself little better than nonsense.

It seems to their Lordships that the proper mode of dealing with the Act is to construe it—as indeed it was construed in Coppen *v.* Moore—in accordance with the intent and meaning of the Legislature. Clearly it was the intention of the Legislature to exclude goods bearing a forged trade-mark, or a false trade description, as well as all foreign goods bearing the name or trade-mark of a British trader without a definite indication of origin. The latter class of goods is excluded absolutely. It seems absurd to suppose that the Legislature could have meant that the admission or exclusion of the former should depend on the state of mind of the importer. Goods bearing a forged trade-mark, or a false trade description, may be mischievous even in the hands of an innocent or ignorant owner. The owner's innocence cannot affect the character of the goods. It is difficult to see why it should be allowed to interfere with the policy of the Legislature.

Section 98, dealing with goods obnoxious to the Act where the owner is unknown or cannot be found, speaks of goods "which if the owner thereof were convicted would be liable to forfeiture." There the language is perfectly accurate. The passage seems to suggest what must be supplied in the preamble of section 104.

Their Lordships think that the words "goods which if sold would be liable to forfeiture," must read as meaning "goods which if sold would be liable to forfeiture on conviction of the seller," or, what comes to the same thing, as equivalent to the expression, "goods the sale of which would