WILLIAMS C. DENNIS, Appellant, vs. **REPUBLIC OF LIBERIA**, Appellee.

] LRSC 2; 1 LLR 323

[January Term, A. D. 1898.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Violation of Revenue Laws.

Landing goods after six o'clock p. m.—Presence of a customs officer does not legalize the act What constitutes actions in rem and in personam.

1. A ruling of the inferior court dismissing a motion for the restoration of goods seized in an action in rem and in personam brought in admiralty, upon the ground that it contained matters which should have been specially pleaded, was sustained.

2. In a suit brought by the Government for contravention of revenue laws by landing goods at a place not the Government's wharf after 6 o'clock p. m., where the defendant showed that the landing had been done in the presence of an officer of the customs, and that he was delayed in landing his goods before dark on account of waiting on board of the steamer for said officer, it was held that this could not justify the violation of law and that the acts- of an officer of customs which are against law are invalid.

3. In admiralty a writ authorizing the marshal to seize goods and to arrest the defendant shows that the action is brought in rem and in personam. It was held that a seizure of goods made by the head of the Revenue department to prevent smuggling is legal.

4. Suits brought in admiralty will not be dismissed on account of legal technicalities, and where necessary, amendments to pleadings will be allowed, upon application, up to the stage of trial, and sometimes will be allowed in the appellate court.

This case, for the violation of the revenue laws of Liberia, was tried and determined by the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in admiralty, at its March term, 1897. The appellant (then libellee) feeling that substantial justice had not been meted out to him in the trial below, in the several rulings and final decree of the judge, brought the case up to this court for review, with the confidence that this final resort of judicature is sufficiently possessed of legal knowledge and moral integrity to mete out to him the justice that he earnestly craves.

The uniqueness of the case, as well, perhaps, as the peculiar circumstances that surrounded it at the time of its trial in the said court below, occasioned no little excitement and criticism, favorable and unfavorable. But this court, recognizing its responsibility as the chief and final legal resort of the country, and having due regard and high respect for the majesty of the law, which is not only the rule for the conduct of the court but also that for the civil and political conduct of all citizens, will proceed to review the case and come to its conclusion, in all good conscience, regardless of smiles or frowns. It shall be our duty, first, to treat upon the most important and reasonable points of the bill of exceptions, and see how far they are sustained by the law and evidence governing the case, and to conclude on the same.

The appellant excepts to the rulings, opinions and decisions, as well as to the final decree of the judge below, first, "Because when, on the 26th day of February, 1897, libellee submitted a motion to your Honor for restoration of certain goods therein named, and after arguments pro and con, your Honor refused the libellee's prayer contained in said motion, to which libellee excepts." On that point the judge below ruled as follows: "The court, after hearing the arguments pro and con, is of the opinion that the matter set forth in the said motion in admiralty practice partakes of the nature of exceptions, and the said libellee having filed a first and a second answer to the libel, should have raised and specially pleaded the matter set forth in said answers; and his neglecting to do so is laches on his part, and the court could not at this stage of the proceedings admit the same to be pleaded, on the motion offered by said libellee. Therefore, the court rules that the motion is insufficient and it cannot sustain the same, as the parties are now confined to the issues relied on in the several pleadings filed in the office of the clerk of this court."

This court will now proceed to consider whether the judge below should be sustained in said ruling or not. From reviewing the record in the case, the court finds that the motion of appellant referred to contains a prayer to the court below for the restoration of the goods which appellant is charged with smuggling, for four reasons, viz : "First, that he considers that the instrument of writing of libellant does not purport to be a libel filed against said goods, which would constitute an action in rem. Second, that it does not purport to be an action in personam. Third, that the seizure of said goods was made by persons not authorized by law so to do. Fourth that the libellee never refused to pay the legal duties on said goods."

Now, then, this court says that it is puzzled to understand the motive that influenced libellee, now appellant, to join issue with libellant, now appellee, by answering the libel and joining the reply, the issue being complete and finished, and last of all, to put in a motion praying for summary relief; for in the opinion of the court the new allegations laid in the motion should have been laid in the answer, which was the right and privilege of libellee to do. It appears to the court that the entertainment of said motion would have granted the said prayer, for the reason stated therein; and notwithstanding the issues already joined on other allegations, the cause would have been brought to an end without substantial justice done, which would have worked injustice to the other party. It would have been lawful for libellee to have filed an amended answer setting forth new facts. (Lib. Stat. Chap. 5, p. 26, sec. 6; p. 6, sec. 7.) And further, the face of the writ directed to the marshal shows that the action instituted is one of a two-fold nature, an action in rem, and an action in personam. The marshal was directed to seize and safely keep said goods for further orders, and also to arrest the body of said appellant (then libellee). Evidently there is an action in rem and in personam. But if there were no such action institution by the libel, then it was the right and duty of libellee, now appellant, to have raised such a question in his written pleadings, which he failed to do; consequently if he suffers it is by and through his own laches.

And again, the court below took jurisdiction in the action from the writ issued, served and duly returned by the marshal according to law. The marshal of the Republic, the lawful officer, acting by the authority of the Court of Quarter Sessions and Common Pleas, under the law is supposed to have seized and executed on said goods, as well as arrested the said libellee, now appellant; the court was then bound to take cognizance of its own action, it being within the scope of the law in such cases made and provided. And even though the first were made by parties to whom such duty is not specifically given by law, still it is the opinion of the court that no wrong was committed, particularly when the Secretary of the Treasury, the head of the Revenue department, whose duty it is to see that the revenue laws of the country are not contravened, and the Attorney General, who also is one of the safeguards of the public's interests, were of the party that made the seizure. The Supreme Court is not willing to, nor will it, establish the precedent that offenders of the law cannot be apprehended simply because the services of the lawful officer are not available at the time of the committal of the offence, so as to make the apprehension under legal warrant; nor will the strong arm of the law lend its aid in upholding such a dangerous precedent. Therefore, it is the opinion of the court that the judge below did not err in ruling out said motion.

The court will now consider the second point in the bill of exceptions, which reads as follows: "And also because when, on the said 26th day of February, libellee in his answer filed in this action motioned for the Honorable Court to dismiss this action for the reasons contained in said answer, after arguments pro and con, your Honor refused to dismiss the said libel, to which libellee excepts."

From the record the court has not ascertained the reason on which the said second exception is based. We find the points raised in the answer to be, "1st, That the libel is indistinct, unintelligible and vague; that is, it is not entitled of any cause. 2nd, That the libel does not show into what division of the Court of Pleas and Quarter Sessions the libellee is to appear, whether law, equity, admiralty, or otherwise. 3rd, that he denies having smuggled any goods. 4th, That he did not land goods at a wharf other than the Government's wharf, after 6 o'clock post meridian$ with the intention of contravening the revenue laws of the Republic, he being detained on the steamer by circumstances which he could not control; that he did not land any goods with a view to the contravention of the revenue laws, there being a custom officer with him in the boat. 6th, That if there were any irregularity of landing, or if no official report were made of goods brought, the fault was that of the custom officer."

In considering the second exception as based on the foregoing reasons set forth in libellee's answer, the court says that in admiralty practice the law allows a greater scope of privilege to parties than in common law practice. In admiralty the court is bound to determine the cases submitted to its cognizance, upon equitable principles and according to the rules of natural justice. The grand object of doing justice between the parties is superior to technical forms and rules, and where the strictest practice of the English common law or the civil law would turn a party out of court, or defeat or pervert justice, by considering an arbitrary rule of proceedings as paramount to all other considerations, the American admiralty finds in the educated reason and cultivated discretion of the court the means of defeating chicanery, rectifying mistakes, supplying deficiencies and suggesting to the party the means of reconstructing his case, if necessary, without the loss of such progress as he may have already made. (Ben. Adml. p. 218, sec. 358.) In admiralty, interests of great moment are involved to the nation, whether in respect to its own citizens, or to aliens. It upholds the nation's majesty and credit; largely, it effects its revenue, which is its lifeblood, that which enables it to exist and to maintain its independence, to develop its growth, and to afford it the means of support and protection to its citizens; therefore, the law will not allow justice to be defeated through technicalities, or mere form, or slight nonessential omissions. It is sufficient, to meet the ends of justice, that the libel or complaint be laid out in such plain, intelligible and concise language that the charge may be fully and reasonably understood.

The court says that the heading of the libel, in the opinion of the court, clearly and distinctly shows in what division of the Court of Pleas the action was taken. The libel begins as follows: "Republic of Liberia, Montserrado County. In the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in Admiralty."

The third, fourth, and fifth reasons as laid in the answer, conveying the same idea and making the same denial, for the sake of brevity the court will consider them under the head of the fifth. The Legislature of Liberia in enacting the laws regulating navigation, commerce and revenue, was extremely careful in providing against the strangulation of the blood arteries of the nation; and while it may appear to the superficial reader that some of the statutory enactments on the subject of smuggling conflict, and are vague and uncertain, yet the unbiased legal thinker will easily discern that the spirit and intent of each enactment are the same. The following are the principal statutes governing the subject: Act of the Legislature of Liberia, 1857; Act of the Legislature of Liberia, 1883, page 3, sec. 7; Acts of the Legislature of Liberia, 1896-7. In carefully reading and comparing the acts referred to, the court has arrived at the interpretation that the spirit of the law is that landing goods from vessels after 6 o'clock p. m. at any other wharf than that designated by the law, is an attempt to contravene the revenue laws of the Republic, and if the act of so landing goods is to evade the law, then it consequently constitutes the act of smuggling. Now, then, whether appellant is guilty or not of attempting to contravene the revenue laws by smuggling goods on shore after 6 o'clock p. m., will be shown by the evidence in the case.

The presence of Custom Officer R. J. Clarke with appellant during the transaction of purchasing and landing said goods, and he remaining on board the steamer after 6 o'clock p. m. to accommodate the said Officer Clarke, do not constitute sufficient justification for appellant. The law supposes that Officer Clarke was furnished with a boat to take him to and from the steamer, and he should have detained his boat for his own accommodation, he not being a shipper. And as appellant is supposed to have had the sole command of his own boat, he was not bound to await Officer Clarke, knowing at the same time that he was responsible for his own acts and the officer for his, and that the one could not cover the other in law. But the fact that Officer Clarke having allowed his boat to leave him on board the steamer, and night-fall having arrived, together with other facts set forth by the evidence, instead of justifying the appellant shows a conspiracy with him.

And the court further says that appellant is not charged with refusing to pay the duties on said goods purchased and landed, but that he is held charged with smuggling the said goods on the shore with intention to contravene the revenue laws of the Republic. Therefore, it is the opinion of the court that the said plea is shallow and insufficient.

The third exception in appellant's bill, based on the pleas set forth in the rejoinder, being save one the same as those in the answer, the court says that the said exception has already been fully disposed of and consequently no further consideration is necessary. As to the fourth exception, it being to the ruling of the judge below allowing libellant, now appellee, to amend his libel, this court is of opinion that no injustice was done by said ruling of the judge below, for the following reasons: In admiralty the practice differs from that in common law. The former does not require all the technical provision and accuracy necessary in the latter; at any and every stage of the proceedings amendments may be made in matters of form, and new counts may be filed, and amendment may be made in matters of substance upon motion, at any time before final judgment. And if necessary, amendments may be made in the appellate court. The object seems to be to allow every facility to the parties to place fully before the court their whole case, and to enable the court to administer substantial justice before the parties without security of action or turning round in court, and never to allow a party to overcome his adversary by the man-traps and spring-guns of covert chicanery, or by the surprise of technicalities of mere pleading or practice. (Ben. Adml. p. 223, secs. 370, 371 ; p. 286, secs. 48o, 488 ; p. 372, rule 24.)

And it is further the opinion of the court that sufficient time and notice had been given to appellant. According to the record in the case, the motion for amendment was made in open court in the presence of libellee, now appellant, and it appears from the record that at least two days elapsed before the putting in of the motion on the request of libellee for time. This court therefore does not consider the exceptions tenable in admiralty practice.

Relative to the various exceptions of appellant to the rulings of the judge below on questions propounded to the witnesses, this court is of opinion that the major portion of said exceptions is not tenable, and that the materiality of those that are tenable is not sufficient to overthrow the case, since they do not seriously affect either side of the issue.

From the record in the case the court finds sufficient evidence adduced to establish the following facts: That William C. Dennis, appellant, on the 18th day of February, A. D. 1897, went on board the steamship Mandingo, an English steamer, then lying in the harbor

of Monrovia, with the intention to purchase forty cases of gin ; that he did purchase said gin, one bag of onions and one bag of potatoes ; that he purchased the articles on board of the said steamer; that he purchased said articles after nightfall ; that a lighted lamp had to be held to give light while taking said goods out of the ship's hold ; that Custom House Officer R. J. Clarke was present when said goods were purchased ; that said goods, with one case of kerosene, were landed by the said W. C. Dennis, appellant, after 6 o'clock p. m., even as late as 8 o'clock p. m. That they were not landed at the Government's revenue wharf, but that they were landed at another wharf not known to the law as the Government's revenue wharf ; that the said W. C. Dennis, appellant, confessed to Hon. F. E. R. Johnson, then Attorney General, that he had done a risky thing, and being asked what he had done, said that he had bought forty cases of gin ; and on being told by Mr. Johnson that he thought he (Dennis) had got himself into trouble, the said appellant replied that he had bought the gin for the election—for the cause. That he, the said appellant, asked witness Thomas Fuller (patting him on the shoulder) not to tell anyone about his buying the gin, not even his (witness's) brother; that Custom Officer R. J. Clarke did not enter in his book said goods bought, to be reported to the Collector of Customs according to law, and that he did not make said entry until he had been spoken to by the Attorney General, nor until the seizure of said goods; that the said goods were not reported to the wharfinger.

These facts having been conclusively established by unimpeachable evidence, it is the opinion of the court that the charge against the said William C. Dennis, appellant, for smuggling goods ashore with the intent to violate the revenue laws of the Republic is fully sustained: His acknowledgment to witness Johnson that he had done a risky thing, and then asking witness Fuller not to expose his act, is sufficient proof of the intent of his mind, and fully shows that he understood the nature of the offence and the penalty attached, and willingly and knowingly committed the transgression, alleging as an excuse that he had done so for the cause.

The court takes occasion here to say that notwithstanding Officer Clarke was the agent of appellee, sent on board of the said steamship to take notice of purchases according to law, and to report the same to the proper revenue officer, still, if he was recreant to his trust and transcended his instructions as such agent, the principal, appellee, cannot be held responsible for his unlawful acts. (Bouv. Law Dict. p. 134, "Agent;" p. 136, "Extent of authority and duties and responsibilities.") Nor can appellant be justified by the neglect of the said officer, which fact he himself recognized when he confessed that he had done a risky thing, and asked not to be exposed.

And the court further says that it was not the duty of the Collector of Customs to assess and collect any duties from appellant on said goods, when they had already been seized; and his (the appellant's) confession that he had done a risky thing in connection with the purchase and landing of said goods was tantamount to a confession that he had contravened the revenue laws.

Now, then, in view of the facts in the case being established by law and evidence, the court says that the judge below did not err in his several rulings, judgment, and final decree in said case; and the Supreme Court adjudges that the final decree of the judge below is hereby affirmed, it being in accordance with law and evidence in said case. The clerk of this court is hereby commanded to issue a mandate to the judge of the court below, the Court of Quarter Sessions and Common Pleas, Montserrado County, to the effect of this judgment.

Key Description: Actions (Admiralty Defined)

Admiralty (Action in rem and in personam; Jurisdiction as to revenue laws; suits not dismissible on technicalities)

Appeal (Bond, Untimely approval a fatal jurisdictional defect although presented to trial judge within statutory time and judge mistakenly notified clerk of timely approval)