

REPUBLIC OF LIBERIA, Libellant, vs. MULLER & CO., Libellee.

LRSC 3: 1 LLR 201

[January Term, A. D. 1886.]

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

Admiralty.

Trading of foreigners at non ports of entry in open crafts or vessels—Appeals in admiralty.

A legally constituted and licensed attorney cannot be debarred from assisting state's attorney in a criminal prosecution, upon the ground that he is a member of some other branch of the Government; his relation with the judiciary in this connection not create him an officer in the judiciary, within the meaning of the Constitutional inhibition that an officer of one branch of Government shall not be competent to hold office in another branch of Government at the same time.

This case has consumed most of the time of the present session of this court, which we felt bound to hear patiently, however tedious it became, because of its nature and importance. Matters in admiralty are not to be heard hurriedly nor confusedly. Such courts are spoken of as "being held under the law of nations," hence demand such attention as the terms of our international relations require. All the world are parties in admiralty causes, and all the world are bound by their decisions.

Viewing this case in the most equitable manner, we find it confused by an irrelevant batch of written evidence, which we will not notice in our summing up; and we are of opinion that the court below should not have admitted such evidence, because, as Mr. McCalla was not a party to this action he was the best evidence introduced. Now, having stripped the case of all irrelevant matters, we take it as presented by the pleadings filed.

Hendrik Muller & Co. of Rotterdam, in the Netherlands, are libelled for contravening the Statute, namely, "An act confining and restricting foreign vessels to ports of entry," by trading at Settra Kroo and other 202 ports of the leeward coast of Sinoe County, "in open crafts or vessels," through their agents, W. Bakker and R. Velhurst; and by establishing factories on the said coast, known and distinguished as the Dutch Factory, in charge of one Hosea McCalla. The libellee denied the truth of all the allegations alleged in the libel of information, whereupon issue was joined.

We perceive, in the record of this case sent here, several minor propositions and motions which the court below decided upon, which in our opinion were without material harm to the appellant. "Appeals in admiralty carry up the whole fund, and mere technical errors below not injuriously affecting the rights of the parties are not sufficient grounds for reversal." On the exception taken to the ruling of the court admitting Attorney Lewis to assist County Attorney Roberts, we say that the court did not err. Practice at law as an attorney is a legitimate avocation permitted in this Republic under certain provisions of law, and any person complying with the statute "pertaining to attorneys," has the right to plead, implead and prosecute before any court of this Republic. The right of acquiring property and of pursuing and obtaining happiness are inherent and inalienable in all men, and it is for the enjoyment of these rights that men pursue certain vocations. Attorney

Lewis was employed, without any reference to his being a Legislator, to assist in the prosecution of this case in the court below, but that did not create him an officer in the judiciary, as alleged by libellee; and the retaining of Attorney Lewis could not create an officer not provided for in our Constitution and laws. Attorney Lewis had a perfect right under his license to be admitted by the court. In thus deciding we only repeat what this court has expressed before. (See ruling in the case of Rep. of Liberia, libellant, vs. R. A. Sherman, libellee,

(1881,) in regard to Attorney Belgrave.)

Another important question raised in this cause, on the attorney's brief, is that as to the nationality of Mrs. J. E. Marrschalk. As this question was not raised in the court below we decline to consider it.

Now we come to the case as presented by the libel of information and libellee's answer, and the evidence. Viewing all of the evidence together, viz., Jackson, Smith, Ellis, Sherman and McCaully, we find it most embarrassing to harmonize them with the allegations. The libellant and libellee both seem to have had it in their power to produce evidence "having a tendency to establish the truth or falsehood of the allegations, and have neglected to do so." The witness Jackson saw Bakker at Settra Kroo, knew that he took away all the goods McCalla had there and at Little Kroo, alleging that McCalla owed Muller & Co. Yet while this act of W. Bakker was an unlawful assumption, and an infraction of the peace, we can see no relevancy to the cause at issue. If McCalla owed Muller & Co., they had their remedy at law, which should have been pursued instead of assuming to carry a raid on a peaceable citizen and take from him his property •vi et armis, as was alleged by the witness. • The act of W. Bakker, agent for Muller & Co., as represented, was so public and notoriously defiant, that the authorities of that locality could not neglect to bring the subject up for examination.

As we understand the points at issue we are of opinion that the right and the wrong are equal, in which instance the condition of the defendant is to be preferred. Therefore this court decrees that the decree of the Court of Quarter Sessions, Sinoe County, sitting in admiralty, is reversed and made of no effect whatever, and the libellee is released from all forfeitures, penalties and charges of whatever nature heretofore imposed on him in this behalf, as though it had never existed.