THE REPUBLIC OF LIBERIA, Appellant, vs. REGINALD A. SHERMAN, Appellee.

LRSC 3; 1 LLR 139 (1881)

[January Term, A. D. 1881.]

Appeal from the Court of Admiralty, Montserrado County.

Attorneys—Libellants—Departure in pleadings—Bond not essential in suits commenced by writ of attachment brought by the government.

1. To be entitled to the privilege of obtaining a license as an attorney the party must be a lawyer, and the court granting said license has power, either by standing rules • or otherwise, to declare what qualificacations shall be requisite to constitute one a lawyer. An attorney, although qualified, is not entitled to practise before any court before obtaining the license to do so required by statute. Where the term of an attorney's license has expired he is barred from practising until same is renewed.

2. The party really entitled to the relief is the libellant in admiralty. A suit brought by the Collector of Customs on behalf of the Republic of Liberia, under the Act of 1878 does not constitute him the party entitled to relief; and therefore, if in a subsequent pleading the name of the Collector of Customs is omitted, this will not amount to a departure nor will it vitiate the pleading. A departure in pleading is where a party departs from the case or defence which he has first made, and has recourse to another.

3. The Statute of 1880, requiring bond to be given where the plaintiff begins his suit by a writ of attachment, does not apply to suits brought by the government. Suits against the Republic of Liberia according to the Constitution can only be brought in such cases as the Legislature of the Republic may by law direct. The Legislature has made no provision for suits to be brought against the Republic for the violation of the conditions of a bond; such suits cannot therefore be maintained at law.

This case comes up on appeal from the Court of Admiralty, Montserrado County, having been instituted by the libellant, now appellant, for the recovery of an amount said to be due by the defendant, now appellee,' for import and export duties.

On the hearing of the case, after arguments on some of the points raised in the pleadings, the judge of said court ruled that "this action has not been brought in the manner prescribed by law, in that no bond has been given by the libellant, as the law demands in this case; therefore this case is hereby dismissed and the libellant ruled to costs in this suit."

The exceptions taken by the libellant to the rulings of the court are these :—

First, to that prohibiting A. F. Belgrave, Esq., attorney and counsellor at law, from taking part in the case before complying with the law governing attorney's license.

The law pertaining to attorneys, as found in Lib. Stat. 1856, p. 115, sec. 1, and the amendatory act, Lib. Stat. 1866, p. 61, are thus to be construed: That no person shall be allowed to plead, implead or prosecute as an attorney before any courts of this Republic but such as shall be regularly licensed by the courts; and such license may at any time be withdrawn, where any indecorous language is used by the person towards either the court or jury. That for the enjoyment of the privilege of an attorney there shall be paid annually twelve dollars and fifty cents into the public treasury, fifty cents to the clerk of the court for drawing said license, and such license shall be signed by the judge of the court and recorded by the register. That all attorneys having paid such amounts,

and being regularly licensed, shall not by any rule of court be prohibited from pleading in any court of the Republic.

There are several points which present themselves to us in considering this law—First, that to be entitled to the privilege of obtaining a license the party must be an attorney, and this, impliedly at least, gives the court the right to determine, by rule or otherwise, who shall be regarded as attorneys; for it is not to be presumed that the law supposed all persons were attorneys, but, in requiring that attorneys shall be licensed by the court to enjoy the privilege, must have intended that the courts should judge as to who were to be considered as belonging to that class. Secondly, that a party having been acknowledged or received as an attorney is still debarred from the enjoyment of the privilege, cannot be allowed to plead, implead or prosecute as such, until regularly licensed, by the payment of the annual tax into the treasury, the drawing of the clerk, signing by the judge, and recording by the register, of the license. This being done, he cannot be prohibited from pleading unless for the offences named in his license; and this feature of the law suggests that the license is essential, otherwise he would suffer no disadvantage by its withdrawal, for if he could practise without it in one instance, surely he would have as much right to the privilege after it was withdrawn as before it was obtained.

The judge of the Admiralty Court did not err in prohibiting the attorney from exercising or enjoying the privileges of such, before he was regularly licensed.

The next exception is to the ruling of the judge that the libellant's reply be stricken out of the record of the case.

Upon reviewing the record it is found that the points raised in the rejoinder, upon which the libellant's reply was stricken out, are, 1, Because it "is not the reply of the party libellant in this case, nor does it claim to be the reply of such party libellant; 2, That by changing the name or omitting the name of the party libellant, a departure is made in said reply from the ground taken by the libellant in the libel filed in this suit."

The query arises, Who is the libellant? "The party really entitled to the relief should always be made libellant. (Benedict's Admiralty, sec. 380.)

Examining the libel, it appears to be a proceeding by and for the belief and benefit of the Republic of Liberia, which is clearly set forth as the libellant, and recognized as such in all of the subsequent pleadings. And it is proper that in all suits in which the Republic is the real plaintiff, that the proceedings should be in the name of the Republic, unless it is otherwise ordered by act of the Legislature. The Legislature has not, however, done so with respect to suits arising under the revenue act; for in the same article of the act making it the duty of the Collector of Customs to enforce the collection of duties, it is distinctly declared that "all penalties and forfeitures which may be incurred for offences against this act shall be sued for and recovered with costs of suit in the name of the Republic of Liberia." (I Lib. Stat. 1856, p. 93, secs. 2 and 8.) Amendments made at subsequent times may have altered the method of procedure, etc. ; but there has been no repeal of the provision requiring the suit to be in the name of the Republic.

True it is that in the libel the Republic complains "by and through William N. Williams, acting for and on behalf of Charles Anthony Snetter, Collector of Customs of the Port of Monrovia," and

in the reply this is omitted; but in both of these pleadings the Republic is declared to be the libellant, and the omission in the latter pleading to say by and through whom the case is brought is not of so material a character as to amount to a departure. A departure is defined to be "the statement of matter in a replication, rejoinder or subsequent pleading, as a cause of action or defence, which is not pursuant to the previous pleading of the same party, and which does not support and fortify it." (1 Bouv. Law Dict. p. 460—"Departure.") "A departure in pleading takes place when a party quits or departs from the case or defence which he has first made, and has recourse to another.' (1 Chitty, p. 674 ; 2 Bouv. Ins. sec. 2992 ; 1 Tidd's Practice, p. 688.) "In all cases where the variance between the former and the latter pleading is on a point not material, there is no departure." (Stephen's Pleadings, 417.) ' 'It is not a departure if a party vary in the replication from his count in an immaterial matter." (10 U. S. Digest, first series, p. 182, sec. 1481·)

The judge of the Court of Admiralty therefore erred in ruling that the libellant's reply should be stricken from the records.

The third exception is to the ruling of the court on the first and second pleas in defendant's answer, that the action was not brought in the manner prescribed by law and no bond had been given by libellant.

The laws specially relied on by the judge in support of this ruling are the Statutes of Liberia approved Feb. 8, 1878 (p. 4, sec. 3) , providing that on failure of any person to pay his dues 'it shall be the duty of the Collector of Customs to apply to the judge of the Court of Quarter Sessions and Common Pleas and obtain a writ of attachment according to the laws regulating attachments," etc., and statute approved Jan. 15, 1880 (p. 9) , providing or prescribing the manner of beginning suits by attachment.

We will not discuss the propriety, impropriety or policy of a government being required to give bond. We think that it has been generally admitted in the arguments by counsel on either side that a bond could be required of the government only on special act of the Legislature, for, suppose the government gave bond and forfeited it, how would the forfeiture be enforced in the absence of legislative enactment, when the Constitution declares that "suits may be brought against the Republic in such manner and in such cases as the LegisIature may by law direct"? (Lib. Stat. p. 234 ; Constitution, Art. 1, sec. 17.)

Now under the first statute it was not necessary for any bond to be given. But then it is contended that the Republic was required to do so by the subsequent statute of the Legislature. If this act affected the government in matters of attachment in common with other plaintiffs, we cannot regard it as doing so simply as to giving bond and not in its other features, and consequently if the Republic is, under this act, placed on the same platform with individual plaintiffs, it is to be presumed or inferred that its privileges under it are the same as those of other plaintiffs. "All plaintiffs," says the third section of that statute, "who shall commence their actions by writs of attachment shall be required to first give good and sufficient bond and security" , but the act does not force any of these "all plaintiffs" to commence their actions by writs of attachment, for observe in section 1 it is stated that the plaintiff may commence his action by this mode of procedure; and

of course if he elects some other mode, he is not forced to a compliance with the requirements set forth for obtaining writs of attachment.

Either the Republic was or was not brought under this statute; if it was, then it was not competent to elect some other mode of commencing the suit than that of attachment; if it was not and remained under the former, then the writ should have been granted without requiring a bond. In the opinion of this court the Republic is not brought under this act, which is "An act to amend an act entitled An act to amend an act establishing the judiciary and fixing the powers common to the several courts.'›

Application was made under the law, Feb., 1878, for the writ and monition; the monition which follows the issuing of the writ was issued, and the writ, if it was not, should have been granted, and the judge failing to do so should not have dismissed the case for what was his and not libellant's error. The failure to issue the writ worked no wrong to defendant, but to libellant, and it is a legal maxim, "Actus curcæ nemznem gravatut" (the act of the court shall prejudice no man).

This court cannot, therefore, affirm the ruling of the court below in this respect. The court recognizes its right to dispose of the case by giving such final judgment or decree as the Court of Admiralty should have given, but as the other points in the case were not gone into and argued in that or this court, we will reserve our opinion on the other questions of law appearing by the pleadings and record of the case.

Therefore, the decree of the court below is hereby reversed and annulled. It is further ordered, adjudged and decreed by this court that the judge below be instructed to proceed forthwith to open said cause for such proofs and evidence as may establish the merits of the case on either side, and to adjudge according to the law and right of the case the said libel, so that its proceedings thereon may be sent back to this court for final adjudication before the close of the present term.