

MAX MULLER, a German subject, transacting mercantile business at Sasstown, Sinoe County, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

ARGUED APRIL 27, 1915. DECIDED MAY 10, 1915.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. In actions in admiralty, pleas of abatement should not be allowed.
2. Where a party admits disposing of goods in his shop in paying the expenses of his business the same will be regarded a sale of such goods.
3. The Acts of 1883 and 1898, require all persons desirous of selling liquors, to obtain a license before doing so.
4. The sale of liquors in quantities exceeding three gallons can legally be done only under wholesale license.

Mr. Justice Witherspoon delivered the opinion of the court :

Libel of Information—Appeal from Judgment. This is a case in admiralty, in which the Republic of Liberia, appellee, libellant below, charges one Max Muller, aforesaid, appellant, libellee below, with having violated the revenue laws of this Republic by selling gin in Sasstown, Sinoe County, without having obtained license to do so.

We notice that at the trial below, appellant (libellee) and appellee (libellant) both in their answer and motion set up pleas of abatement asking the court to dismiss the complaint or libel and the answer, which the court below wisely refused to do; it is a settled principle of admiralty law, that courts will not allow a party to be turned out of court for technicalities; but will permit them to amend their pleadings at any stage of the proceedings (see *Sherman v. Republic of Liberia*, 1 Lib. L. R. 145).

Without further commenting upon this point we will apply ourselves to the

evidence in the case, and in doing so, we will give a brief sketch of such portion of the evidence as will make clear the decision of this court.

Witness Max Muller stated that he ordered from the firm of A. Woermann, Sasstown, fifty cases of gin, seeing the scarcity of gin at Grand Cess. That he also tried to get license from Cape Palmas to trade or dispose of this liquor; failing to so obtain the said license, he returned twenty-five cases of this gin to A. Woermann, and kept twenty-five cases, for which he paid £15 sterling. That these twenty-five cases he purchased were used in paying off his clerk, and other employees; and in purchasing lumber or building materials. That he disposed of seven cases against expenses, and eighteen cases against wages.

Witnesses James A. Tunning and J. S. Dickerson, state that while investigating a matter of debt between Mr. Max Muller and his clerk Yanh-Tee, they saw in a certain stock or account sheet in which he Max Muller had charged Yanh-Tee his clerk, and upon which he Max Muller claimed of the said Yanh-Tee his clerk £16: 15:0, two items of gin, viz.: four cases and twelve cases of gin.

Now the law governing this action reads as follows : "And any person or persons desirous of vending any of the above named liquors, that is to say; rum, gin, brandy, whisky or any other alcoholic liquors in quantities of less than twenty gallons, shall be required to pay an annual tax of one hundred dollars for such privilege; and of more than twenty gallons, three hundred dollars, payment to be made in form as above.

"It is further enacted, that should any person or persons, citizen or foreigner be found violating any of the provisions of this Act by importing or selling or purchasing alcoholic liquors of any description at any time without having paid the amounts above named, and obtained the necessary license as prescribed in the first section of this Act, shall be fined by any court having competent jurisdiction in a sum of not less than five hundred dollars, nor more than five thousand dollars for each offense, and any and all such liquors be confiscated to the Government of Liberia." (Act passed by the Legislature, 1883, pp. 6-10, secs. 1 and 2.)

We notice that appellant, libellee below, attempts to set up that he did not sell the gin in question, but paid his work-hands with it; but the court feels such transaction, tantamount to selling the same, could be pleaded with equal propriety where any other goods had been used in paying the debts of appellant, libellee below; such a ruling would be against the spirit and intention of the Act itself; any amount of fraud could be perpetrated upon the Government if this law were to be viewed in any other light.

The Act of 1898 (p. 30, sec. 2) further forbids the sale of liquors in quantities exceeding three gallons, except under wholesale license. The court is therefore, of the opinion that all sales of liquors in quantities of three gallons, can legally be done only under wholesale license.

The court is of the opinion that the judgment of the court below should be amended, so as to read : that this being the first offense of this nature, committed by the appellant, reduces the fine to five hundred dollars. And it is so ordered.

Max Muller, in person. *Attorney General*, for appellee.