

**JACOB WEST**, Agent for J. W. West, Appellant, vs. **THE REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1903.]

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

Violation of Revenue Laws.

An exporter of articles of African produce does not violate the revenue laws where he exports such articles without permit, when such permit is asked for, fee tendered and refused by the customs authorities.

This case was tried in the admiralty jurisdiction of the Court of Quarter Sessions and Common Pleas, for Grand Bassa County, at its June term, A. D. 1902. The appellant was libelled by the Republic of Liberia, libellant, for violating the revenue laws by exporting sundry articles of African produce from said County, without first obtaining a permit from the Collector of Customs for the privilege of so doing. Upon the case being called up, the appellant plead "not guilty" to the charge. The court below having heard the evidence pro and con in the case, on the fifth day of August of the aforesaid year, delivered its decree, by which appellant was condemned to pay to the appellee the sum of twelve hundred dollars and costs. The appellant, being dissatisfied with said decree, excepted thereto, as well as to other rulings of the court in the premises, and has brought the case before this court upon an appeal.

By reference to the record in the case we observe that the questions involved are chiefly as follows: Firstly, Had the Secretary of the Treasury legal authority to issue instructions and regulations requiring that permits be obtained from Collector of Customs by shippers of African produce prior to the shipping thereof? Secondly, Did the regulation in question contain a penalty for the violation thereof, or does the statute upon which it is founded supply that want? and Thirdly, Did appellant violate this regulation?

The Statutes of Liberia "establishing the Treasury Department and defining

the duties of the same," provide as follows: "The Secretary of the Treasury shall, with the approbation of the President, have power to make and issue from time to time such instructions, rules and regulations, to the several collectors and all other receivers of public money—the treasurer and sub treasurers—as to the manner of performing their duties, and as to the rendition of their accounts and returns to the department, as may to him seem best calculated to promote the public interest." (Acts Leg. of Lib. 1858, p. 36, sec. 7.) By a subsequent enactment of the Legislature of Liberia, the power of the Secretary of the Treasury in this relation has been confirmed. He may issue regulations touching the collectors of customs, and his regulations, when not repugnant to the law of the land, are enforceable as law. (Acts Leg. of Lib. approved Feb. 1, 1900.)

This court is firmly of the opinion that the statutes above referred to confer upon the Secretary of the Treasury the power and right to issue from time to time such regulations with respect to the management of the customs as the public interest may demand.

As to the second proposition, the court would observe that it does not appear from the record that the regulation of the Secretary of the Treasury with respect to permits, which regulation appellant is charged with violating, contains a penalty for the violation thereof. Nor do the statutes above cited contain a clause providing a penalty for persons who may export produce without first obtaining a permit. This, we would remark, was essential; for, as Mr. Blackstone observes, the main strength and force of the law consists in the penalty annexed to it. (1 Blk. Corn. star page 57.)

The fourth section of the Act of 1900, above cited, which appears to be the authority upon which the court below predicated its decree, could not, it is the opinion of this court, be construed to apply to cases for the violation of revenue law by failing to obtain a permit to export produce, which is the nature of the case under consideration.

We now proceed to consider our third and last proposition. It appears from the record that libellee was charged in the libel field against him in this suit, with defiantly, persistently and unlawfully exporting from the port of Grand Bassa, nine boat-loads of African produce without first obtaining permits from the

Collector of Customs to ship; although said libellee was duly requested so to do, he failed and refused to comply with the customs regulations of this Republic.

Let us see whether these allegations were proved at the trial or not. The evidence of the Collector of Customs, as well as that of the wharfinger whom the court would presume to be the best evidence in a suit of this nature, does not prove that libellee "defiantly, persistently and unlawfully" failed and refused to apply for a permit to ship on the day mentioned in the libel. The question was put to witness Liles, the Collector of Customs, by the attorney for the defense, as follows: "Did Mr. West, the appellant, apply to your office for a permit?" To this query the witness replied, "I am not positive; if he did, I refused him." It was also given in evidence by the wharfinger that appellant's clerk offered him, previous to shipping as aforesaid, the fee charged for permits, which fee he, the wharfinger, refused to accept, upon the ground that he had received instructions from the Collector of Customs not to allow appellant to ship. It was also stated in evidence by the same witness, that it was customary for appellant to pay him the fee charged for permits, and that the Collector of Customs had on previous occasions accepted the same from him in favor of appellant for permits. The evidence further shows that appellant sent his clerk to the customs department prior to shipping as aforesaid, and that the Collector was not there in his office. And further, it was stated that the said produce, excepting the coffee, was shipped under the eye and with the knowledge of the wharfinger.

From the circumstances surrounding this case, as well as the light thrown on it by the prosecution's own witnesses, this court is firmly of the opinion that the charge alleged against the appellant was not substantially proved at the trial, and this court has vainly sought to discover the evidence and the law upon which the decree of the court below is founded. The judgment of the court below is therefore reversed and the clerk of this court is hereby authorized to issue a mandate informing the judge of the court below of this decision.