

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rolet and others v. the Queen and another (two Boats, Nos. 410 and 115), from the Vice-Admiralty Court of Sierra Leone; delivered 4th August, 1866.*

---

Present :

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

SIR EDWARD VAUGHAN WILLIAMS.

THIS is an Appeal from a Decree of the Vice-Admiralty Court of Sierra Leone, by which the Court condemned as forfeited to Her Majesty a large quantity of goods belonging to Victor Rolet one of the Appellants, and two boats belonging to the other Appellants, on the ground, as to the goods, that they had been illegally unladen and unshipped contrary to the provisions of certain Ordinances of the Colony and of an Order of Her Majesty in Council, and, as to the boats, that they had been illegally used in the removal and conveyance of the goods. The Appellant, Victor Rolet, is a Frenchman, residing in France, and he has a mercantile establishment at Freetown in the Colony, where he carries on business through an agent, Honoré Leconte, under the title of Malfilatre and Co. The goods in question were sent by him from France to his mercantile establishment at Freetown on board a brig called the "Belus," which was consigned to some merchants at Fouricaria, near Mellicourie, a place which lies to the southward of Sierra Leone, and about 100 miles distant from it. On the 11th April, 1864, the "Belus" in the course of her voyage to Mellicourie came to anchor off Sierra Leone, and her captain communicated to Leconte

that she had goods on board for Malfilatre and Co., and that she was anchored out of the jurisdiction of the Colony. Leconte thereupon directed boats to be sent out to bring in the goods. Four boats were accordingly dispatched to the "Belus" for that purpose early in the morning of the 12th April. These boats had not returned from the "Belus" when the Custom-house was about to close on the evening of that day. Application was in consequence made in the first instance by Barlatt, a clerk of Malfilatre and Co., and subsequently by him and Leconte to Shaw, the acting collector, to allow the goods when they arrived to be placed in the Custom-house shed for the night. Shaw appears at first to have refused, but afterwards to have acceded to the application. He gave a permit for the goods to be received in the shed, and in the course of the evening they were landed and stored accordingly. On the following morning, the 13th April, Barlatt went to the Custom-house and made a report inwards of the boats and the goods. This report described the boat as a British boat of Sierra Leone, of which Daniel Coker was master for this present voyage from Mellicourie. It set forth the particulars of the goods, and purported that the entry was a just report of the name and particulars of the ship, and contained a true account of her lading; and further stated that bulk had not been broke nor any goods delivered out of the ship since her loading in Mellicourie. The Report was signed by Coker, who was master of one of the boats which had been sent out for the goods, and was declared by him in the presence of Shaw, by whom it was also signed.

Barlatt at the same time made two entries inwards of the goods, some of them being for consumption in the Colony, and others for exportation, and requiring a separate entry. Each of these entries purported to be "an account of merchandize imported by Malfilatre and Co. in a British boat from Mellicourie." These entries were also declared before Shaw. The wharfage dues were paid, and the usual bonds given for payment of the duties. Some of the goods intended for sale in the Colony were then removed from the Custom-house shed to the store of Malfilatre and Co. On the morning of the same 13th April the boats had again been dispatched to the "Belus" for the purpose of

bringing in some more of the goods; and these goods were brought in, as to some of them, in the evening, and as to the rest, in the night of the 13th April. They were landed at the Custom-house, and stored in the Government sheds. In the meantime Shaw had taken steps for ascertaining whether the "Belus" was or was not within the jurisdiction of the Colony, which appears to extend three miles seaward from the Cape of Sierra Leone. On the morning of the 13th April he sent out Hanson, the Landing Surveyor at the Custom-house, to the "Belus" and other vessels which were lying off the Cape, and Hanson went on board the "Belus." He returned in the afternoon, and reported that he thought that the vessel was within the jurisdiction.

Pike, the Harbour-Master, was then sent out, but he did not reach the vessel that night. He went out, however, again to the vessel on the morning of the 14th April, and then took her bearings, and found her to be within the jurisdiction. On this same morning of the 14th April the goods which remained in the Custom-house sheds, and two of the boats which had been employed in bringing them in, were seized by Shaw. Two or three days after the seizure had been made the "Belus" left the Colony, and on the 9th May following a monition was issued calling upon the Appellants to show cause why the goods and boats should not be condemned. On the 23rd May, 1865, the Appellants brought in a claim for the goods and boats.

The libel in the cause was filed on the 1st June, 1865, and on the 23rd June following the Appellants filed their plea or responsive allegation. Witnesses were then examined both on the part of the seizer and of the claimants; and upon the hearing of the cause on the 17th August, 1865, a Decree was made by the Deputy Judge of the Court rejecting the claim, holding the libel to be sufficiently proved, and condemning the goods and boats. It is from this Decree the Appeal before us is brought.

Upon the opening of the Appeal a great number of points were insisted upon on the part of the Appellants having reference to the competency and regularity of the proceedings in the cause, and to the validity of the appointment of the Deputy-Judge, and his power and authority to deal with the

cause ; but in the view which we have taken of the case it is not necessary for us to give any opinion upon these points. In order, however, to avoid any possible question in other cases, we think it right to say that we have no doubt whatever that the Deputy Judge was duly appointed, and had full power to adjudicate upon the questions in the cause. With this exception, we lay these preliminary points out of consideration.

The real question in this case seems to us to be whether these goods and boats were liable to seizure and condemnation upon any of the following grounds : either, first, that the goods, being liable to the payment of duty, were unshipped from the " Belus," at anchor within the Colony, before due entry had been made of the goods, and before any warrant or sufferance had been granted for the unloading thereof ; or secondly, because the goods, being subject to the payment of duty, they were unladen from the " Belus," at anchor, as aforesaid, at a place other than the Port of Freetown ; or thirdly, because the goods, being liable to the payment of duties, were unshipped from the " Belus " while in the Colony, customs and other duties not being first paid or secured. These are the points which appear to us to arise upon the Ordinances and the Order in Council referred to in the libel, and which were considered by the Deputy-Judge to be the real points in the case, and they are the points which were mainly if not solely relied upon on the part of the Respondents in the course of the argument before us.

We proceed, therefore, to consider these points. It is to be observed, in the first place, that the third ground of seizure above referred to rests upon the non-payment not only of customs' duties but of other duties also ; but the seizure in this case clearly proceeded upon the non-payment of customs' duties only ; and upon examining the Ordinances and Order in Council we do not find that any forfeiture could arise upon the non-payment of other duties. The case, therefore, must depend upon the goods having been unshipped, as they undoubtedly were, before the payment of the customs' duties. In considering this question, it is not in our opinion necessary to enter into the details of the Ordinances and Order in Council. It is sufficient to say that,

in our opinion, if the "Belus" was within the jurisdiction of the Colony, when the goods were unshipped, the goods and boats were liable to seizure and condemnation, but that they were not so liable if the "Belus" was not within the jurisdiction of the Colony when the goods were unshipped.

The material question therefore which we have to consider is a mere question of fact whether the "Belus" was within the Colony when the goods were unshipped. We have carefully examined the evidence upon this question, and considered the collateral facts bearing upon it, and the conclusion at which we have arrived is that the "Belus" was not in fact within the jurisdiction of the Colony when the goods were unshipped: First, as to the testimony of the witnesses. Upon the witnesses on the part of the seizer being first examined, not one of them ventures to swear that on the 12th and 13th, when the goods were unshipped, this vessel was not beyond the three miles which form the limit of the jurisdiction of the Colony. The only witnesses who speak directly to this point are Hanson and Johnson, and each of them upon cross-examination declines to swear that the vessel was within the three miles on either of those days. The evidence of Pike, the harbour-master, however goes to show that the vessel was within the three miles on the 14th, and that she was then in the same position as she had been on the two previous days, but on cross-examination he admits that the fact of the vessel having been in the same position on the 14th as on the 12th and 13th was no more than supposition on his part, and it is most remarkable that Hanson, who was on board the vessel both on the 13th and the 14th, and must therefore have known whether she had changed her position or not, is upon his first examination wholly silent upon that point.

There can be no doubt, therefore, that this evidence was insufficient to support the seizer's case, but it was insisted on his part that the *onus probandi* rested upon the Appellants, and that it was upon them to show that the vessel was not within the jurisdiction of the Colony when the goods were unshipped, and this argument on his part appears to us to be well founded. We must consider, therefore, the evidence on the part of the Appellants

upon this point, and we think it quite sufficient to establish their case. The testimony of the boatmen, no less than five in number, clearly shows that the vessel was beyond the three miles when the goods were unshipped, and we find nothing to displace this evidence, for the rebutting evidence on the part of the seizer is, as it seems to us, quite insufficient for the purpose. It goes no further than this: that Hanson, on his further examination, says he has every reason to believe that the vessel was in the same position on the 13th and the 14th, but he assigns no grounds for this belief. Taking the case, therefore, to rest on the testimony of the witnesses, we think that there was no sufficient case to warrant the sentence condemning these goods and boats.

Then, how does the case stand upon the collateral facts. They seem to us to be strongly in favour of the Appellant's case. It is clear from the evidence that the goods in question might have been sent on to Mellicourie, and thence imported into Sierra Leone on payment of duties, and we cannot but think it in the highest degree improbable that Leconte should have ventured to incur the risk of seizure for the mere purpose of saving the expense of bringing back the goods from Mellicourie, which, so far as we can see, was the only benefit he could gain by unshipping the goods at Sierra Leone. Again, notwithstanding what is said by Shaw, we consider it to be sufficiently proved that it was customary to admit the importation of goods from vessels outside upon the payment of duties, and it is admitted by Shaw that he saw the vessels outside on the 12th. It is surely most improbable that he should have granted the permit on the evening of that day, should have received the report and entries on the following morning, and should even have allowed some of the goods to have been removed from the Custom-house sheds on that morning, if he had then believed the vessel to be within the jurisdiction. Such conduct on his part goes far to show that he did not then entertain any such belief whatever he may have thought afterwards.

The excuse which is made for this course of conduct on his part is that he was told that the goods came from Mellicourie; but it is clear from the evidence that it was the custom to insert Mellicourie and other places in the entries at the Custom-

house when the goods came from vessels outside; and we cannot readily believe Shaw to have been ignorant of this practice, to say nothing of there being two witnesses (Barlatt and Macrae), who distinctly state that they told him that the goods were coming from the outside. There are also these further facts in favour of the Appellants' case; that the character of the boats was of itself almost, if not fully, sufficient to show that the goods had not come from Mellicourie; that no Custom-house officer was put on board the "Belus" on the 13th, which, as we apprehend, would have been the ordinary, if not the necessary course, had she been within the jurisdiction; and that the monition was not issued till so long a time after the "Belus" had left the Colony, and the Appellants had lost the benefit of testimony which they might otherwise have been able to adduce.

We think it right to add that we desire to give no encouragement to the practice of importing goods from vessels outside, and thus evading payment of duties which would otherwise be payable; and that where such a course is pursued the parties adopting it must expect to be strictly dealt with; but looking to the evidence and to the conduct of the Custom-house officers in this case, we are satisfied that this vessel was not within the jurisdiction of the Colony when the goods were unshipped; and we shall therefore humbly recommend Her Majesty to reverse this sentence, with costs in the Court below and of the Appeal, and to condemn the Respondent Shaw in damages and costs.

---

