

THE COQUITLAM CASE

Full Text of the Judgment Delivered by the Circuit Court.

The Label Against the Steamer and Her Cargo Dismissed.

The full text of the decision of the United States court of appeals in the Coquitlam case has been made public. The case is entitled the steamer Coquitlam, et al., vs. the United States, appellants, et al., Thomas Earle and the Union Steamship Company, claimants and respondents, vs. the United States, appellees. The case was tried before McKenna and Gilbert, circuit judges, and Knowles, district judge. The opinion is by Gilbert, circuit judge. Among other things, the opinion says:

The steamer Coquitlam, with a cargo of \$190 fur seal skins and some supplies, was seized by the United States revenue cutter Corwin at or near Port Etches, in the territory of Alaska, on June 22, 1892, and was taken by the cutter to Sitka and turned over to the collector of customs. On the 5th of July following the United States district attorney filed in the district court of Alaska an information for the seizure of the vessel and her cargo and the forfeiture of the same for alleged violation of the provisions of the revenue statutes of the United States.

The label of information contains four counts. The first count alleges that on or about June 19, 1892, within the limits of the Alaskan collection district and within four leagues of the coast of said district, near the island of Afognak, there was unladen from the fur schooners Brenda, Umbrina, Sea Lion, Ventura, Mand S, and the Walter A. Earle, fur seal skins amounting in the aggregate to 3,883, and that on or about the 20th and 21st days of June, 1892, there were unladen from the Oscar and Hattie, the Viva and Fawn, 2,292 fur seal skins; that each of said vessels were from the port of Victoria, B. C., or some other foreign port, were laden with merchandise, were bound for the United States, and on June 18, 1892, were anchored in a small bay in the waters adjacent to the district of the Alaskan collection district of Alaska; that none of the vessels had come to the proper place for the discharge of their cargoes, nor had they been authorized by the proper officer of customs of the district to unload the same; that all of the merchandise so unladen was at the time thereof received into the Coquitlam, with the knowledge of the master thereof, all contrary to the provisions of sections 2,867 and 2,868, of the Revised Statutes.

The second count alleges in substance that the Coquitlam is a foreign vessel and cleared from the foreign port of Victoria with a large cargo of general merchandise. On June 18, 1892, she arrived in a small bay on the island of Afognak, within the collection district of Alaska, and did not report to the deputy collector of customs at Kodiak, nor obtain a special permit to proceed further inland and unload or take on cargo. On June 19, 1892, when within four leagues of the island of Afognak the steamer transferred a large amount of general merchandise to the British schooners and took on cargo also of seal skins, contrary to section 3,109, of the Revised Statutes.

The third count contains a restatement of the first count, and alleges that the acts therein stated constitute an unloading of the cargo contrary to section 2,867, of the Revised Statutes.

The fourth count alleges the forfeiture of the vessel, because she is a foreign vessel and cleared from a foreign port and brought into the waters of the district of Alaska merchandise of a value of \$60,000; that a large quantity of the cargo was subject entry and duty had not been paid or secured to be paid to the United States; that all of the merchandise was brought into the United States with the full knowledge of the master, and contrary to the provisions of sections 2,867, 2,867 and 2,868 of the United States, and with intent to defraud the revenues of the United States.

The answer of the Union Steamship Company, limited, the owner and claimant of the Coquitlam, admits the transfer of fur seal skins, but denies that any of the schooners were bound for the United States, or that the merchandise was from a foreign port, or was bound for the United States, or that the transfers were made within the district of Alaska or within four leagues of the coast.

The same general denial is made of the second count. The answer also sets up an affirmative statement of facts which it is not necessary here to repeat.

The answer of the owner of the cargo is similar to that of the claimant of the steamer. In meeting the allegations of the fourth count alleges that the whole of the cargo belonged to and was consigned to the several owners thereof, and no portion was consigned to the master, mate, officers or crew of the steamer, and no portion of the cargo of merchandise or seal skins was destined to any port or place in the United States, nor to any citizen or person residing in the United States.

The facts as shown by the record and which are not disputed are:

Awarded Highest Honors—World's Fair, DR. J. H. COOK'S CREAM BAKING POWDER MOST PERFECT MADE.

A pure Grape Cream of Tartar Powder, Free from Ammonia, Alum or any other adulterant. 40 YEARS THE STANDARD.

The sealing schooners mentioned cleared from Victoria, B. C., about May 1, 1892, on making sealing voyages in the North Pacific. They were all foreign vessels duly registered at ports in the Dominion of Canada, and were licensed for the voyage. Their owners belonged to the Pacific Sealers' Association. When these vessels embarked it had not been determined whether the modus vivendi, which had been proclaimed May 1, 1891, for a period of one year, had been renewed. When it was known that it would be renewed the Coquitlam was fitted out at Victoria by the Pacific Sealers' Association for the purpose of carrying supplies to the sealers and to bring back their catch of fur seal skins for the first half of the season and to inform them of the modus vivendi had been renewed. She cleared regularly from Victoria on June 8, 1892, and her clearance, etc., showed the nature and destination of her voyage. It was understood that the sealing vessels should rendezvous to meet her. The log book of the Coquitlam, kept by the master, has this entry under date of June 18, 1892:

"At noon, Marmot Island abreast; set course for Cape Tonki. Weathered calm and steered for rendezvous. The Coquitlam on June 19 they all proceeded seaward for the purpose of transferring the cargoes beyond the limit of the waters of the United States.

It was supposed by the master of the Coquitlam and by the masters of the schooners that the limit of jurisdiction of the United States was two leagues from the shore. Upon the trial of the cause, the claimants endeavored to prove that the transfer of cargo to the vessel had proceeded out to sea more than four leagues from the shore, and that the acts complained of took place beyond the jurisdiction of the United States. The district court found that the transfers took place at a point seven miles from the shore. The court of appeals cannot find an error in the finding.

The principal contention in the appeal concerns the first and third counts, which charge the violation of sections 2,867 and 2,868 of the Revised Statutes. Section 2,867 provides in substance that no vessel bound for the United States shall unload for any purpose whatever before such vessel has come to the proper place for the discharge of her cargo and has been duly authorized to do so by the proper officer of customs service. The penalty is a fine of \$100 for the officer and mate and the forfeiture of the merchandise so unladen except in case of some unavoidable accident, necessity or distress. Section 2,868 provides that no vessel shall unload for any purpose whatever before such vessel has come to the proper place for the discharge of her cargo and has been duly authorized to do so by the proper officer of customs service. The penalty is a fine of \$100 for the officer and mate and the forfeiture of the merchandise so unladen except in case of some unavoidable accident, necessity or distress.

The court cites a number of authorities germane to the case, and says: "In view of the principles and the facts in this case we cannot say that the schooners arrived within the waters of the United States, or that they were bound to the United States. The words 'and bound to the United States' are not given their literal meaning. If it had been intended in the statute to prescribe a penalty for the unloading of the cargo of a foreign vessel merely upon her arrival within the waters of the United States, irrespective of the purpose for which she entered those waters, it is evident that the words 'and bound to the United States' would have no place in the statute. It is not every casual arrival of a vessel within the waters of the United States and the unloading of a portion of her cargo within such waters, therefore, which comes within the prohibition of the statute. The vessel must also be one bound to the United States for the purposes of her voyage. The unloading of a cargo which is destined to the United States and to be there discharged."

It is not contended that any injury has been done the United States by the acts that are complained of in this libel, or that the United States has in any way been defrauded of revenue. The intention was to evade the provisions of the revenue laws, but it is contended that the policy and spirit of the law has been broken by the transfers of merchandise within the waters of the United States without permission of the proper authorities, and the attention of the court is directed to the danger of frauds upon the revenues which may result from the permission of such transfers. We must not be diverted from determining what is the fair purpose and meaning of the law by considerations such as these. If the statutes, upon a proper interpretation of their meaning and purpose, have not prohibited the acts which have been done in this case, the penalty pronounced by the statutes has not been incurred.

The second count of the libel seeks to forfeit the steamer for violation of section 3,109 of the revised statutes. This statute provides for the forfeiture of a vessel from any foreign territory that unloads without permission from the customs officer.

It is alleged that the master failed to report to the office of collector of customs at Kodiak. It is held that the law was not violated by merely bringing the vessel within the waters of the United States and failing to report her presence there, but the penalty is incurred only in case such vessel proceeds further inland, either to unload or take on cargo, without a special permit from the collector. Not only does the libel fail to allege that the Coquitlam after entering the waters of the United States proceeded further inland, either to unload or take on cargo, but there is no record, nor proof upon which such an allegation could be sustained if it had been made.

The fourth count alleges the violation of section 2,867, 2,867 and 2,868. The statute makes forfeitable only such merchandise as is consigned to the master, mate, officers or crew. It is alleged that any of the merchandise was so consigned. The answer of the owners of the cargo contains the distinct averment that it was not so consigned, and there is no proof to the contrary. It is unnecessary, therefore, to further consider this count of the libel. The decree will be reversed and the libel dismissed."

Judge McKenna concurred in the view that the charges against the Coquitlam were not sustained by the evidence and he concurs in the judgment of reversal.

On the other points decided by the majority of the court he expresses no opinion.

FINGAL RAN ASHORE

The Well Known Vancouver Freight Steamer Driven on Shore Opposite James Island.

Was Floated This Morning—The Dominion Government Dredge Also in Trouble.

On Wednesday night the well-known freight steamer Fingal, Capt. McKenzie, ran ashore near the Spanish Indian reserves, opposite James Island. The Fingal and the Staffa, both owned by the McKenzie brothers, of Vancouver, have for some time past been engaged in carrying hay and other farm produce from the Lower Fraser to the markets. As they are flat-bottomed vessels and draw but little water, they could easily run up to the different farms along the Lower Fraser to take on produce. The Fingal arrived here on Monday night with a cargo from the Fraser. On Tuesday evening she started for Vancouver. When Trial Island was reached Capt. McKenzie found that the heavy sea which was running was too much for the steamer and he turned her about and made the inner harbor. A fresh start was made and usually the vessel was again encountered near Trial Island. Capt. McKenzie kept his vessel facing the sea, however, and succeeded in passing Darey Island, when she refused to answer the wheel. The strong current carried her toward the beach, which she struck at about 10 o'clock. When the captain saw that there was great danger of his vessel being beached he cast both anchors, but they could not hold the steamer and she was soon piled up on the shore. The captain and his crew of four men remained on board until yesterday morning, when Capt. McKenzie drove from Saanich to the city for assistance. The steamer Sadie was secured, but it was too stormy for her to go out yesterday and she returned here early this morning.

The Sadie returned this afternoon having succeeded with the assistance of the steamer Skidegate in pulling the Fingal off into deep water. She was towed to James Island, where safe anchorage was secured. The Fingal lost her rudder and her keel has been injured. She will be towed by the Skidegate to Vancouver to-morrow, where necessary repairs will be made.

The Dominion government dredger "Midark" is also in trouble. She left her anchorage on Wednesday afternoon in tow of the government tug Princess and the tug Hope. The big dredger proved too much for the tugs in the heavy sea that was running, and yesterday the three were found by the steamer Marade dangerously near Discovery Island. The Skidegate went to their assistance and succeeded in getting them into deep water. According to a report brought down by the Skidegate, which arrived with a load of stone today, the tugs are still struggling with the Marade. The Skidegate says that off Moresby Island this morning, and the tugs were evidently unable to tow her against the current, as all three when seen were almost at a standstill.

Having successfully organized the Sealing Association, owners of schooners are now actively engaged in the work of preparing their vessels for next season's operations. By Tuesday next it is expected that at least three of the Victoria fleet will have cleared for a cruise in Southern waters. The schooners which are about ready to leave are the C. D. Rand, Captain Townsend, and the Mary Ellen, Captain MacPhee, of the Boscowitz fleet, and the Mary Taylor, Captain Lavender, belonging to Mr. A. J. Bechtel. The start is earlier than that made in former seasons, but the captains are anxious to get as far south as possible before meeting the seal herds coming north. They expect to go south of the Farallon Islands, and before they begin hunting, and will follow the herds north, terminating the voyage on April 30, when the coast season closes. Other vessels will probably follow them to the south, while those for the Japan trade will start to sea on or before January 1, as in former years.

The tug Astoria, Capt. Beecher, towed from the Cape to Port Angeles yesterday the ship Norwester in ballast from San Francisco. The tug was towed from Royal Roads to Tacoma today by the Swedish ship Lady Lina, which has been chartered to load grain. The Lorne left yesterday with the Zinita, which she will tow to Portland. If the Zinita gets to that port before December 1 she will save some thousands of dollars by securing her November charter.

Lawrence P. Butler, while travelling on the steamer Kingston between Port Townsend and Seattle, some time ago stepped on the covering of one of the round hatches in the deck for passing coal into the bunkers below. The covering had not been secured properly; it tipped and Butler fell through, injuring himself permanently. He sued the steamer and the Alaska Steamship Co. and Judge Hanford has just awarded him \$1,200 with interest and costs.

The Northern Pacific steamer Olympia arrived from Tacoma this afternoon and after taking on eight Chinese passengers and some freight left for the Sound. The steamer carried from the Sound 3,000 tons of cargo, including 2,000 tons of flour and 800 bales of cotton.

The British whaleback steamer Progress, that for the past year has been carrying coal from Meximino to San Francisco under charter to John Rosefield, has been chartered to take a cargo of grain to England. About two weeks ago her year's contract as a collier on the coast expired, and as soon as her last coal cargo was discharged she was discharged she anchored in the stream and went begging with the rest of the anchored fleet for a cargo. The Progressist was sent out for Messrs. Dunsmuir on a year's trial with the option of purchasing at the end of that time. She did not turn out a huge success.

The Dominion government steamer Quadra, Capt. Walbran, returned this afternoon from a twenty-day cruise in northern waters. The Quadra went up as far north as Port Simpson. The buoys were overhauled and placed in good order. Captain Walbran made inquiries at Queen Charlotte Islands and elsewhere regarding the alleged illegal fishing and gathered some useful information for the department. The steamer was met in Queen Charlotte Sound on her way north. The Quadra will take the Countess of Aberdeen and party to Vancouver on Monday.

MR. LAWRENCE IS FREE

Mr. Justice McCall Finds the Charge Against Him is Not Proven.

Mr. J. A. Lawrence, is again a free man. After a trial which lasted nearly a week, Mr. Justice McCall delivered judgment at 5 o'clock on Wednesday afternoon. He learned Judge found the charges of false pretenses not proven. His judgment in full follows:

"I have since the adjournment read over my notes of the evidence and the exhibits and have carefully considered the arguments of counsel, who very fully analysed the evidence. But I have not found any ground to change the opinion which I formed as the case proceeded. I do not think I would be serving any useful purpose by summing up the evidence, in the view which I take of the result at which I ought to arrive, and I purposely abstain from doing so, because of other proceedings which are open to the prosecution.

"Captain McCallum gave the most circumstantial account of the transaction, and I did not see anything in his evidence or his manner of giving it to lead me to think him capable of willfully giving false evidence, though he is apparently a man of strong feeling, and positively denied the charges against him and was not seriously shaken in his examination. He was also supported in his denial by the evidence of a number of witnesses, some of whom at least appeared quite disinterested. The case for the Crown as to the question at issue rests almost wholly on the evidence of Captain McCallum.

"There was much stated in the evidence for the defence which I could not take as satisfactorily established in the face of the other evidence, if that were the question for me to decide, but though I do not think the evidence for the Crown and especially that of Capt. McCallum, is fairly open to all observations made by Mr. Bodwell (for the defence) yet after making allowance for such discrepancies as are invariably found in all evidence, however trustworthy, and after discarding much which seems to me immaterial, yet there remains a residuum material to the issue, and particularly in the written portion of the evidence, as to which I am not satisfied with the explanation attempted to be given. The evidence for the defence, and especially that of Capt. 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