Correspondence re court case State of Washington vs H. Vrooti et al 1917-1918

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Location: A6-5-F-3

SUPREME COURT

STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Appellant,

VS.

HISAKACHI UMAKI, et. al.,
Respondents.

No._____

Appeal from the Judgment of the Superior Court of the State of Washington for Whatcom County.

HON. ED. E. HARDIN, Judge.

Brief of Intervenors and Respondents

HADLEY & ABBOTT,

Attorneys for Intervenors and Respondents.

P. O. Address, Bellingham, Washington.

ANSTETT PRINTING CO., BELLINGHAM, WASH.

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STATEMENT.

The facts in this case are simple and undisputed, and are all set forth in the transcript, and findings of facts of the court on the petition for confiscation of the property in question.

Hasakachi Umaki and I. Tabato, two members of the Japanese race, but now subjects of Great Britain and residents of the Province of British Columbia, Canada, were apprehended by the Fish Commissioner of the State of Washington, on the 6th day of August, 1917, near Point Roberts, in Whatcom County, Washington, in the waters of Puget Sound, and charged with unlawfully fishing in those waters.

The case proceeded to trial and the defendants were convicted on the 11th day of September, 1917, duly sentenced and fined, and their fines were paid. At the time of the apprehension of these defendants, the Fish Commissioner also seized the boats, nets and gear which were then in the possession of the defendants, and held the same.

After the conviction of the defendants, a petition was filed by the State of Washington praying for a decree of confiscation and forfeiture of all the seized property to the State of Washington (Trans. pp. 5 and 6). To this petition the British Columbia Packers' Association, a corporation, and one K. Tomo and one C. Uyemo, filed petitions in intervention. the petition of the British Columbia Packers' Association stating that it was the owner and holder of valid and subsisting mortgage liens upon the boats and gear sought to be confiscated, and that the petitioner was unaware that said properties were used in illegal fishing and did not authorize, connive at, encourage or consent to such use of said boats and property (Trans. p. 7 to 9). The petition of K. Tomo and C. Uyemo stated that they were the respective owners of the two boats in controversy here, together with all the web, gear and paraphernalia seized in connection therewith, subject to the mortgages to the British Columbia Packers' Association. That the petitioners were ignorant of the fact that said boats had been taken into American waters

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until after the apprehension and arrest of the convicted defendants; that they did not authorize, connive at, encourage or consent to the use of said boats for illegal fishing and were wholly innocent of any wrong doing, and that they had in fact instructed the convicted defendants not to take said boats out of British Columbia waters, they having been leased by the owners to the defendants for fishing purposes in British Columbia waters for the season of 1917. (Trans. pp. 12 and 13).

A third boat with its paraphernalia which was seized at the same time, was ordered confiscated by the court, no defense having been made to the petition of the State relative thereto. (Trans. pp. 10 and 11).

On the issue framed by the petition of the State for confiscation of the two boats in controversy, and the petitions in intervention above referred to, the cause was submitted to the court for trial without a jury, and on the 29th day of December, 1917, the court made and entered its findings of facts and conclusions of law herein, (Trans. 14 to 17) and thereafter on the same date, following said findings and conclusions, entered its judgment and decree, decreeing that the petition of the State of Washington for confiscation should be denied, and a return of the boats in question to the respective owners, (Trans. 18 and 19).

No exceptions have been made or taken by the petitioner, the State of Washington, to the findings of facts and conclusions of law as made by the court, and the facts as found must therefore be taken as true, and these are to the effect that the property sought to be confiscated was not the property of the convicted defendants, but was the property of the intervenors K. Tomo and C. Uyemo, and that the intervenor British Columbia Packers Association was the owner and holder of valid subsisting chattel mortgages upon the property sought to be confiscated; that none of the intervenors connived at, encouraged or consented to the use of said property for the purpose of illegal fishing, and were wholly ignorant of the fact that it had been used for such purpose until the apprehension and arrest of the

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convicted defendants; that the illegal use of the boats and gear by said convicted defendants was their own act and committed without the knowledge, consent or connivance of the intervenors or either of them.

It was stipulated by all parties to the action, that the determination of the question of the right of confiscation and forfeiture of the property in question, should be determined as though the conviction of the convicted defendants had been under Chapter 31, Section 41, Laws of 1915.

From the judgment of the court denying the petition of the State of Washington and decreeing a return of the seized property, the State has appealed and assigned one ground of error only which is set forth on page 8 of appellant's brief, as follows:

"The court erred in ordering and decreeing a discharge and release of the boats, nets, gear and other property seized in the above proceedings from any claim of the State of Washington."

ARGUMENT

Section 41, Chapter 31, Session Laws 1915,

reads as follows:

"Section 41. Fishing Without License Prohibited.—It shall be unlawful to catch, take or kill for food fish with any appliance or by any means whatsoever except with hook and line commonly called angling or trolling unless license so to do has first been obtained from the commissioner. The presence in any of the waters of this state of any vessel of any nature whatever equipped with any of the appliances required to be licensed by the laws of this state for the taking of fish, or of any fishing appliance for which licenses are required, shall be prima facie evidence that the owners thereof are engaged in fishing.'

"Any Person who shall engage in fishing with any appliance whatsoever without having first obtained a license or made lawful application therefor shall be deemed guilty of a misdemeanor and the commissioner is hereby authorized to seize said appliance and the same shall be confiscated to the state."

And it is under the last paragraph of this section that these proceedings were instituted by the state.

The legislative act is a recent one and so far as we are advised has not before been before this court

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And it is under the last paragraph of this section that these proceedings were instituted by the state.

The legislative act is a recent one and so far as we are advised has not before been before this court

for interpretation or adjudication. Neither do we find any parallel cases in the decisions of this court on similar statutes. We are therefore under the necessity of presenting the matter from basic and elemental principles of right, justice, and judicial construction, aided by the expression and decisions of other courts, in other jurisdictions, in cases arising under statutes of similar import.

We have naturally turned to the decisions of the Federal Courts, construing the Federal statutes, of which there are many, providing confiscation and forfeiture of properties under various conditions.

Section 3450 of the Revised Statutes of the United States, (Comp. Statutes 1913, Sec. 3352) provides that whenever any goods or commodities for or in respect whereof a tax is or shall be imposed or any materials, utensils or vessels proper or intended to be made use of for or in the making of such goods or commodities, are removed or are deposited or concealed in any place with intent to defraud the United States of such tax, all such goods and commodities and all such materials, utensils

and vessels respectively, shall be forfeited "and in every such case all the casks, vessels, cases or other packages whatsoever containing or which shall have contained such goods or commodities respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals and things used in the removal or for the deposit or concealment thereof respectively, shall be forfeited."

This section was construed by the Circuit Court of Appeals for the 4th Circuit, in a lengthy and able opinion in the case of United States vs. Two Barrels of Whiskey, reported in 96 Federal, on page 479, and from that opinion we quote the following excerpt as in our judgment being the clear and logical conclusion to be drawn from the statute and from the facts in this case.

"Penalties and forfeitures, although generally the consequences of crime or guilt, do not necessarily imply the one or the other. As the forfeiture of a man's property is one of the severest punishments that the law can inflict, the mind is naturally perplexed by two considerations of directly opposing

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tendency, — the one being the principle of natural justice, which revolts at the punishment of the innocent; the other the apparent necessity of doing that very thing, in view of public policy, in order to prevent those shifts and subterfuges by which the revenue laws are evaded. The statute must be clear and unequivocal which imposes upon the court the duty of punishing one man for the fault of another. The object of section 3450 is to punish all persons who, with intent to defraud the government of the tax, remove or conceal goods upon which the tax has not been paid, and in addition to the punishment of such persons, it provides that all conveyances and animals used in the accomplishment of this unlawful purpose shall be forfeited. Undoubtedly there is a presumption against any one whose property is found employed in this unlawful business that it is so engaged with his consent, but can it be that this presumption is irrebuttable? The contention of the government is that, this being a proceeding in rem, it is the guilty thing that has offended, and that this is to be forfeited, irrespective of any participation of its owner. If this team and wagon had been stolen from the owner, it would be clearly unjust, unreasonable, and preposterous to forfeit it because it was used by the wrongdoer in the transportation of illicit liquor. If this exception is admitted, it would follow that property has no guilty character, except as connected with persons who have charge of it, and the result is that it is the duty of the court to inquire into the facts; and, if it appears clearly that the owner has not hired

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The Chinese Exclusion Act of May 6, 1882, as ...ended by the Act of July 5, 1884 (Compiled Stat... ...1913, Sec. 4297) provides among other things ...follows:

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that unless the appointment of the offending Master was consented to or acquiesced in by the owner or the owner has been guilty of some act of omission or commission which renders him or his property liable for the acts of the Master, his interest should not be forfeited.

230 *Federal* 962.

United States Revised Statutes, Sec. 2140, (Compilation 1913, Sec. 4141), provides for the search of boats, stores, packages, wagons, sleds and places of deposit, etc., of persons who may be suspected of introducing spiritous liquor or wine into Indian country, and further provides that if any such liquor is found therein—

> "the same together with the boats, teams, wagons and sleds used in conveying the same, and also the goods, packages and peltries of such persons shall be seized and delivered to the proper officer and shall be proceeded against by libel in the proper court and forfeited, one-half to the informer and the other half to the use of the United States."

The United States District Court for the District of Montana has twice construed this statute.

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In the second case, the facts were that an Indian …ho was given possession of a motor car under a …conditional contract of sale, used the machine for the …purpose of introducing intoxicating liquor into In…dian country, and it was held that only his interest …in the car could be forfeited; that the vendor having

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In the second case, the facts were that an Indian who was given possession of a motor car under a conditional contract of sale, used the machine for the purpose of introducing intoxicating liquor into Indian country, and it was held that only his interest in the car could be forfeited; that the vendor having

given possession for no evil purpose, his interest could not be confiscated.

United States vs. One Automobile, 237, *Fed.* 891.

The three Federal statutes above referred to and quoted, embody three different classes of offenses. The first, violation of a Revenue Act, and the second and third, the violation of statutes in the interest of public policy such as the state statute under consideration here, and in each instance the provisions for seizure and confiscation are just as mandatory and practically in the same language as Section 41 of the Fisheries Code under consideration; and yet in each instance it is the holding of the United States Courts construing these statutes that they cannot apply to innocent owners who had no part in and no knowledge of the commission of the offense against the statute, and the reasoning of these decisions is based upon such sound principles of justice, right and common sense that it appeals to us as unanswerable.

It will be noted that Section 41 of the Fisheries

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The very use of this language by the legislature negatives any intention on its part to give to the statute the force and effect contended for by the appellant. "*Prima facie* evidence" is always rebuttable, and when the legislature provided that the presence of these boats in the waters of the State of Washington without license was prima facie evidence that the *owners* thereof were engaged in fishing, it was clearly the intention that such owners should have the right to rebut this evidence by proof of the fact that they were not so engaged and the language of the succeeding paragraph of the section, providing for the seizure of fishing appliances, in our judgment expressly limits

the appliance to be seized to that owned by "any person who shall engage in fishing". In this instance the owners were not engaged in fishing either directly or indirectly, and therefore the provision for confiscation has no application to them or their property.

It is found by the court in this case and is the undisputed fact that one of the intervenors herein was the holder of valid and subsisting mortgages for sums very nearly equal to the value of the boats seized. These mortgages had been executed and properly registered long before the commission of the offense charged in this action, and this intervenor had nothing to do even with the leasing of the boats for the fishing season of 1917, and to hold that the boats should be confiscated and forfeited by reason of the offense of the party who happened to be temporarily in possession and charge of the same and without knowledge, consent or connivance of the mortgagee, would so unsettle securities of this character as to seriously disrupt business. That said intervenor and mortgagee has a right to protection

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Jones on Chattel Mortgages, 3rd *Ed.* S
299 to 301.

National Bank vs. Norris. 19 *L. R. A.*

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And numerous other cases which might be cited.

The cases cited by appellant in its brief to the effect that proof of intent is not necessary to a conviction for violation of certain classes of statutes, have no application to this case.

The principle there announced is that any person commits the offense when he does the forbidden thing, even though he had no evil or wrong intent beyond that which is implied from the doing of the prohibited act. But in this case the intervenors, the owners and mortgagees of the property sought to be confiscated, have not "done the forbidden thing" not connived at or consented to the doing of the for-

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bidden thing and had no knowledge of the doing of the forbidden thing, and, as so aptly remarked by the learned judge in the case of U. S. vs. Two barrels of Whisky above referred to, "the property has no guilty character except as connected with persons who had charge of it."

We recognize the principle of law announced by counsel for appellant, that in certain cases the principal may be convicted of a crime committed by his agents such as the selling of liquor to Indians by a bartender, etc., but in this case no relation of principal and agent whatever exists or existed between the intervenors and the convicted defendants. One intervenor merely held valid and subsisting mortgages on the property and had nothing to do with the leasing of the boats; the other two intervenors being the owners of the boats subject to the mortgages, had leased or hired them in a perfectly legitimate way for a definite period to the convicted defendants and passed the possession of the boats to said defendants for the limited period with the distinct un-

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...relations existing between the United States a
...Great Britain by which the Kingdom of Great B
...ain and her colonies and subjects are placed in
...class of "most favored nations."

Filed at Washington
19,1918

bidden thing and had no knowledge of the doing of the forbidden thing, and, as so aptly remarked by the learned judge in the case of U. S. vs. Two barrels of Whisky above referred to, "the property has no guilty character except as connected with persons who had charge of it."

We recognize the principle of law announced by counsel for appellant, that in certain cases the principal may be convicted of a crime committed by his agents such as the selling of liquor to Indians by a bartender, etc., but in this case no relation of principal and agent whatever exists or existed between the intervenors and the convicted defendants. One intervenor merely held valid and subsisting mortgages on the property and had nothing to do with the leasing of the boats; the other two intervenors being the owners of the boats subject to the mortgages, had leased or hired them in a perfectly legitimate way for a definite period to the convicted defendants and passed the possession of the boats to said defendants for the limited period with the distinct understanding that they were to be used in the waters of British Columbia and we submit that there is nothing in this record which tends to show that any of the intervenors had any knowledge that the boats were to be used or were used otherwise than as intended by the terms of the lease. Neither was there any circumstance to even arouse a suspicion in the minds of the intervenors that such use might be made of them, and none of the intervenors are justly chargeable with any blame or negligence in the premises.

It is true that all of the intervenors are subjects of Great Britain and residents of the Province of British Columbia, but this fact cannot militate against their rights since under the law of comity they are entitled to equal protection of the law in this country as the citizens of this country in their property rights, and especially in view of the treaty relations existing between the United States and Great Britain by which the Kingdom of Great Britain and her colonies and subjects are placed in the class of "most favored nations."

The suggestions of counsel for the appellant in his brief as to possible dire results to the fishing industry of the state which might flow from the construction of the statute as given by the trial court, and as contended for by the intervenors and respondents herein, in our opinion exist only in the fertile imagination of counsel and are based upon alleged facts wholly outside the record in this case, and we do not deem it therefore necessary to give them further consideration. In any event if they exist they cannot change the rights of the parties to this controversy or the proper rule of construction of existing statutes and the remedy, if any is required, is with the legislature and not with this court.

The intervenors and respondents therefore insist that the learned trial court based his construction of the statute and consequently his conclusion of law and judgment, upon principles of sound justice and right and the well recognized and accepted and established principles and rules of construction of similar statutes, and submit the cause to this court

confident that such judgment will not be disturbed by it, but will be in all things approved and confirmed.

All of which we now ask.

Respectfully submitted,

HADLEY & ABBOTT,

Attorneys for Intervenors and Respond

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All of which we now ask.

Respectfully submitted,

HADLEY & ABBOTT,

Attorneys for Intervenors and Respondents.

Due, legal and timely service of the within Brief acknowledged and admitted, and three copies thereof received at_____, Washington, this_____day of April, A. D., 1918.

Attorneys for Appellant.

ALL LETT(TO BE ADDRESSED TO THE ASSOCIATION

CABLE ADDRESS "PACKERS"
A.B.C. AND A1 CODES USED

The British Columbia Packers Association.

Vancouver, B.C. October 18th, 1917.

Mr. F.G. Bell,
Brunswick Cannery,
Ladner, B.C.

Dear Sir:-

We enclose herewith letter received from Messrs. Hadley & Abbott, of Bellingham, which we would ask you to read over carefully and return to us as soon as possible.

Yours truly,
The B.C. Packers' Association,
W.H.P. Baker
General Manager.

WHB.
Enc:

W. Bell -
See these Japanese Bosses & if they wish & have their boats there is a chance for them & do so - they would have & be down at Bellingham on Tuesday next - that is the owners of the boats from whom we have the mortgage -

October 16th, 7.

Messrs Hadley & Abbott,

Mason Building,

Bellingham, Wash.

Dear Sirs:-

The bearer will hand you copies of the following Chattel Mortgages:-

Oct. 30th - 15 - K. Tomo.

" 30th - 15 - C. Ueno.

Mch. 3rd - 14 - G. Ikimizu.

The boat I.T. 48 is included in the C. Ueno Mortgage and is the one equipped with 5 H.P. Palmer Engine No.8229.14. Should you require certified copies of these Mortgages, we can procure them later, but were unable to do so to-day.

Yours respectfully,

The B.C.Packers' Association,

WHB.

General Manager.

A. M. HADLEY
W. H. ABBOTT

HADLEY & ABBOTT
LAWYERS
MASON BUILDING
BELLINGHAM, WASHINGTON

July Second
Nineteen Eighteen.

B. C. Packers Association,
Vancouver, B. C.

Gentlemen:-

On the 24th ult the appeal in the matter of the two boats of K. Tomo and C. Uyeno, was argued to the Supreme Court, the writer making the trip to Olympia for that purpose.

We may expect a decision now within a few days. The division of the court which sat the week beginning with the 24th and heard arguments, is off the bench this week writing opinions, and it is possible that the case may be reached and decided this week.

We herewith enclose bill for our services and cash expenses in this behalf.

Yours very truly,

Hadley & Abbott

Dic:-AMH.

1.enc.

Correspondence re court case State of Washington vs H. Uyeno, et al 1917, 1918

A. M. HADLEY
W. H. ABBOTT

HADLEY & ABBOTT
LAWYERS
MASON BUILDING
BELLINGHAM, WASHINGTON

January
Eleventh
Nineteen Eighteen.

Mr. F. Bell,
C/o B. C. Packers Association,
Vancouver, B. C.

Dear Sir:-

Replying to your letter of the 4th inst re possibilty of releasing Japanese fishing boats under bond, pending appeal, we beg to advise that the Prosecuting attorney advises us that the Fish Commissioner has indicated his desire to appeal the cases, and the writer attempted, while in Seattle this week, to take up with him the matter of releasing the boats under bond, but found the Fish Commissioner was away in Oregon for a few days.

We will endeavor to take the matter up with him on his return, and advise what can be done.

Yours very truly,

Hadley & Abbott

Dic:-AMH.

Correspondence regarding case State of Washington vs. H. Yoshi, et al 1917, 1918

VS H. Vinci, et al 1917, 1918

Bradley v Abbott

Jany 11/18

A[illegible]LETTERS TO BE ADDRESSED TO THE ASSOCIATI[illegible]

[illegible]NSE NO. 1-768

CABLE ADDRESS "PACKERS"
A.B.C. AND A1 CODES USED

The British Columbia Packers Association,

Vancouver, B.C. November 15th 191 8.

Mr. F. Bell,
Brunswick Cannery, Canoe Pass,
Ladner, B.C.

Dear Sir:

We are in receipt of a letter from Messrs Hadley & Abbott, Bellingham, enclosing copy of an advertisement of sale of fishing boats and nets seized for fishing in U.S. waters. The writer phoned down to someone at the Brunswick cannery who stated they would give it to you as soon as you had returned. We beg to confirm the information.

The boats you are interested in are,

1 belonging to K. Tomo, marked H U 104, length 29ft.6'10" beam, equipped with 5 H.P. Palmer engine, 1, 5 3/4 " mesh net tagged H.U, 104, 150 fathoms long, 100 meshes deep.

1 belonging to C. Uyemo, marked I.T.48, length 29' 2", beam6' 7", 5 H.P. Palmer engine. One net, 5 3/4 " mesh, tagged I.T. 48, 130 fathoms long, 100 meshes deep.

358 1 belonging to S. Koba, marked S. T. 1340, length 30' 6", beam 7', equipped with 6 H.P. Fairbanks Morse Engine. 1, 5 3/4 " mesh net tagged S. T. 1340, 300 fathoms long, 100 meshes deep. The latter boat belonging to Mr. S' Koba of Steveston. We might say that Mr. Koba called in here and stated to us that he was leaving for the east and had left instructions for your contractor, George -- to look after this for him, that he had left money to buy in this boat and net. Please give this your attention.

WHB. G.

Yours truly,
THE B.C. PACKERS' ASSOCIATION
W.H. Bandy
General Manager.

Correspondence re court case State of Washington vs H. Uno et al 1917/1918

P.S.

Tenders for the purchase of these seized boats will be received by Mr. L.H. Darwin, State Fish Commissioner of Washington, P.O. Box, 384, Seattle, W ash. Bids will be received until 12 o'clock, Tuesday, November 26th, 1918.

lcw

Correspondence re court case State of Washington vs H. Vinci, et al 1917, 1918