doc. 24

In the Exchequer of Pleas.

No. 4. Rule absolute to the extent and on the terms in fold - Jas. S. Willes -

Fonseca

v

Foote & anor.

Brief

W. Willes 2 Sur
Jas. S. Willes
Jan 25/44

To shew cause against
Re answered rule on behalf
of the Plff -

W. Willes will oppose the
Seam: being viva voce, but
he may consent to a Comm:
on the ordinary terms, the Plff
being at liberty to examine
witnesses under the same Comm:
W. Willes shall be furnished with
Plff Comm: names immediately

Baxendale Tatham Upton & Johnson
7 Great Winchester Street

In the Exchequer

Between Manuel Pinta da Fonseca Plaintiff

and

John Foote and Henry James Matson

Defendants

Doc 25

The Viva Voce Examination of Edmund Gabriel a Witness on the part of the above named Defendants Sworn the 11th day of October 1844 pursuant to an order of the Honorable Mr Baron Rolfe bearing date the 17th day of September 1844 and examined before Samuel Dare Esquire one of the Masters of the Court of Exchequer

I am a Paymaster and Purser in the Navy and was Senior Officers Clerk on board the Ship Madagascar, which Ship has since been paid off in ordinary. I served as such Senior Officers Clerk from February 1842 to August 1844. The Ship during that period was employed on the Coast of Africa. We captured several Ships during that time. We took seven or Eight vessels

The Plaintiffs Counsel here objected to any evidence being given by the Witness of any Acts done with which the plaintiff was not connected

Examination resumed. The ships so captured were equipped with a larger number of water casks than are usually found on board Merchant Vessels. They greatly exceeded that number. They also contained Rice and Farina and other provisions not usually found on board Merchant Ships. The captured Ships had also a large quantity of spare plank and they were also fitted up with a greater number of bulkheads and larger Hatchways, with open gratings, than are usually found in ordinary Merchant Ships. I was employed for about four years on the Coast of Africa before joining the Madagascar During those four years I served in the Forrester and also

in the Wolverine and Iris - several ships were captured by those Vessels during that time and they were equipped in the same manner as those taken by the Madagascar - I have been frequently in the port of Cubinda on the Coast of Africa The Port of Cubinda consists of three principal towns, respectively called Principe Jacks Town, Porto Rico and Prince Sams Town I have seen a person called Principe Jack - I have seen him frequently. He was called Principe Jack by the natives in my presence. I recollect going ashore to Cubinda with Captain Foote, about noon, on the 23rd May 1842 - We went in a boat and were accompanied by other boats from the Madagascar and her consort the Water Witch. There were about a hundred men in the different boats including Sailors and Marines - Captain Foote and myself on landing went to a Barracoon - a few Sentries were posted round it by Captain Footes orders. Captain Foote sent some person off with a message - We then went to two other Barracoons, which Captain Foote in like manner posted round with sentries - On going back to the first Barracoon, Principe Jack together with xxx other persons called Francisco Franque, Prince Sam Mamfouca Franque Mafouca de Ponta de Cubinda and Commodore de Ponta came to us there - In answer to a question by the Defendants Counsel as to the Station and character Principe Jack appeared to hold among the natives of Cubinda where Fonseca the Plaintiffs Barracoon was situate, the Witness replied "He appeared to act as Sovereign" A similar question as to the station and character of Francisco Franque was also put - which the witness answered by stating "That he appeared to act as the Chief of Porto Rico within the Port of Cubinda, but subordinate to Principe Jack as Sovereign of the whole port" A like question as to the station and character Principe Sam appeared to bear amongst the natives of Cubinda

of such Barracoons - How was Principe Jack dressed ? In European costume with a Scarlet ro cloak or robe, with grass Cloth cap on his head wore only by Mambonca's or chiefs over which was a Cocked Hat and feathers with a Silver headed Cane in his hand - He wore also shoes and stockings, which none of the other Natives wore but I cannot say he wore a Shirt - He came with an Attendant holding an Umbrella over his head - There was nothing else to distinguish him from other Natives.

Question - How were the other persons you call Chiefs dressed In a costume of cloth superior to other Natives around them wearing grass caps on their heads but differing from that worn by Principe Jack - There were many other natives in the Barracoon besides

Question - Did any ceremony take place at this meeting between Principe Jack and the other Chiefs? None that I observed The other Natives were standing except when they had occasion to address Principe Jack - They frequently addressed him during this meeting and then always did so kneeling at his feet Captain Foote addressed them

Question - After he addressed them what did they do ?

Answer - Some retired on one side, but the majority remained in consultation with Principe Jack - The Palaver lasted for about half an hour . At the end of that time a communication was made to Captain Foote by Principe Jack - Principe Jack then with Fransisco Franque and other Chiefs, dictated to me words which I wrote down on a Sheet of Paper which I now produce and to which they affixed their marks or signatures in my presence - The Sheet of Paper was here produced and tendered in evidence by the Defendants Counsel and which I have marked with the letter A - It was objected to by the

Plaintiffs Counsel. but I allowed it to be received subject to the Opinion of the Court

Examination continued - The meaning of Mamfouca placed before the names of two of the marksmen in the paper means 'Chief' That is its general meaning - After the document was signed I took possession of it by Captain Foots direction and immediately took it with me on board the Madagascar - Question - During the time you were serving on the Coast of Africa do you know whether any trade was carried on in the Port of Cubinda? Answer - the Export Slave trade exclusively (The Answer objected to by the Plaintiffs Counsel)

Question - Why do you say exclusively? Answer - Because I know of no other - Question - How do you know that the Slave trade was carried on? Answer - Because I have seen Slaves shackled together in numbers in Barracoons - Question How do you know they were Slaves? Answer - Because I have seen the manner in which they have been kept and fed and flogged and illtreated by their Boatswains and driven out of the Sheds like cattle

Objected to by Plaintiffs Counsel

I only know that the Barracoon which I have described as belonging to Fonseca by the Agent in charge was by his telling Captain Foote so in my presence - Question - What was the Character and Station Principe Jack held among the Natives of the port of Cubinda? Answer - Principle Chief and Sovereign possessing absolute power in all matters connected with the port of Cubinda - Question - Are there any Laws in the port of Cubinda - Answer There are some Laws which are enforced as rigidly as in any other Savage country - I am acquainted with some of them

Objected to by the Plaintiffs Counsel

Question - Do you know how the laws are made? Answer - Yes they are made under the authority of Principe Jack and the other Chiefs Prince Sam and Fransisco Frangue - a Majority of the three decide

Objected to by the Plaintiffs Counsel

Objected to by Plaintiffs Counsel } Question- Do you know of any written law in Cubinda- Answer I do no

Objected to by Plaintiffs Counsel } Question - Do these three Chiefs make the laws? Answer - Yes-

Question - What is the house called in which Principe Jack lives? Answer - The Kings house and it is distinguished by a large red flag bearing his name and the house is situate in the centre of the town it is the largest building- Question- What has been the demeanour of the Natives towards Principe Jack as you have seen it? Answer - Always with respect taking off their hats and addressing him generally as one towards whom they look up to as their Chief- It is only at Palavers and consultation they address him on their knees.

Objected to by Plaintiffs Counsel } Question Are the laws of Cubinda determined by the will of Principe Jack Prince Sam and Transisco Franco or is any other Authority necessary- Answer The laws are framed by them without any other authority

Cross examined by Plaintiffs Counsel

Question- Do you profess a knowledge of the laws of Cubinda? Answer- As much as any other Naval Officer who has visited the place.

Question- And no more I presume? No-

Question - In your judgment is it necessary in order to the validity of a law in Cubinda that it should be promulgated? I think not

Question- Were you ever present at the making of any law in Cubinda? I have; because I was present when the document hereinbefore mentioned was signed and which I considered to be a law

Question- Were you ever on any other occasion present at the making of any law there- No

Question - Then was your answers as to the mode of making laws in Cubinda founded on the knowledge acquired on that occasion? Yes; and from the description given me by the

Chiefs themselves as to the manner in which the laws were made:
Question. Except what you have heard from other persons, and what you saw on that occasion, had you any knowledge of the mode of making laws in Cubinda - None
Question- Can you of your own knowledge say whether there ever was a law so made in Cubinda either before or since the 23rd May 1842? I can
Question - Before or since? Since
Question - Did you ever know any made before that day? No
Question - How far is Cubinda from Saint Paul de Loando? I think between 150 and 200 Miles
Question- Can you state whether Cubinda is within the district of Africa called Loando or not? It is not
Question- Do I understand you to say that your knowledge of the laws of Cubinda on which your Answers have been founded is on your own personal knowledge or from the so information of others? Partly from my own personal knowledge but chiefly from the information derived from the Chiefs-
Question- Can you speak of your own knowledge of any Act of absolute power ever performed by Principe Jack before the 23rd May 1842? I cannot of my own personal knowledge -
Question- Will you swear as a fact that there were no exports besides Slaves from the Port of Cubinda? I cannot swear to it as a positive fact
Question - Will you swear that there were not exports of Orchilla weed Ivory and wax and other commodities of the County from the Port of Cubinda? I will not swear it
Question Do you mean by Captain Foote and Lieutenant Matson to mean the Defendants in this Action? I do
Question - Was the Madagascar on the 23rd May 1842 under the Command of Captain Foote and the Water Witch under the command of Lieutenant Matson lying off the port of Cubinda? They were

Question - Was there any other British Men of War there at that time? A Small Schooner, a Tender to the Water Witch -
Question - Under whose command was she? Mr Wilcot Mate of the Water Witch I believe -
Question - How long had the Madagascar and the Water Witch been lying off before the 23rd May 1842 - I do not know but I think about one or two days
Question Did the Water Witch arrive before the other Vessel? I dont know; but I think they arrived about the same time; but the Water Witch had been cruising off the port some time before the Madagascar arrived
Question - Was there a Barque there called the John A Robb? I never saw her
Question. Were you ever informed by Captain Foote or Lieutenant Matson, that she had been met by the Water Witch - No -
Question - Had any Marines or Seamen been sent ashore from the Madagascar, before you landed with Captain Foote on the 23rd May 1842 - I then had -
Question - At what time and how many? I dont know what time but the number was from 80 to 100 - They left the Ship and pulled for the Shore.
Question - At about what time did the men leave the Ship? I do not know; but it was before ten in the morning
Question - Was Captain Foote on board the Madagascar when they left? I dont know
Question Did you afterwards go on shore with Captain Foote? I did
Question Did you join the Marines and Seamen who had previously been sent ashore? Yes
Question - When you so joined them, where were they? On the Beach and at the nearest Barracoon

Question - Did you then proceed as you have staked to the nearest Barracoon? Yes.

Question - Were xxx Sentries placed round the 3 Barracoons by order of Captain Foote? There were Sentries placed but I don't know by whose orders..

Question. Were the Sentries so placed as they might have been seen by Captain Foote? I do not know: Captain Foote might have been short sighted.

Question - Supposing Captain Foote to have had ordinary sight was what was done by the Seamen and Marines on the 23rd May 1842 at Cubinda within the scope of his Vision? Certainly

Question - Do you not know that Captain Foote was in command on that day? He was Senior Officer present But the Seamen and Marines were under the immediate command of Lieutenant Matson.

Question. Was Lieutenant Matson then as well as Captain Foote on shore and by at what was done? He was.

Question - When you went with Captain Foote to the Barracoon second from the Beach was it standing? It was.

Question - You have staked there were Store Houses in the enclosures - Did you see any goods in them - I did not go into them.

Question. Did you see that Barracoon second from the Beach at any time afterwards - No

Question - Or the place where it stood? I saw the place where it had stood several months afterwards.

Question - Do you know whether that Barracoon was destroyed on the 23rd May 1842 - I do not

Objected to by Defendants Counsel

Question Do you know from what you heard from either of the Defendants that it was destroyed on that day - I know from Lieutenant Matson that it was destroyed on that day with the other two..

Question - Did Captain Foote return to the Madagascar on the 23rd May - He did

Question - About what time ? I do not know

Question - Did the Seamen and Marines return to the Madagascar on that day - They did

Question - Did they return empty handed or did they bring any thing with them ? I did not see them return to the Ship

Question Where were you when they so returned - I was below in the Cabin

Question - Did Captain Foote return before or after the general body ? I dont know

Question - Had you then returned before Captain Foote - Yes - Sometime

Question - As you were not an executive Officer you returned to the Ship leaving Captain Foote and the others ashore - Yes

Question - Besides the Seamen and Marines from the Madagascar were there any from the Water Witch - There were

Question - about how many - I dont know

Question - Mention the names of the Officers of the Madagascar ashore on that day including the Marines ? Captain John Foote Lieutenant Walter Reid Lieutenant George Kenyon Lieutenant Hewast R. N. Doctor Burton Assistant Surgeon, myself and other Junior Officers whose names I dont remember

Question - Do you recollect any other Officer or crew of the Madagascar that were ashore on that day ? I do not

Question - What Officers of the Water Witch were ashore on that day ? Lieutenant Henry James Matson, Mr. Hurdle, the second Master Mr. Curror, the Assistant Surgeon, Mr. Barnes Clerk in charge, Mr. Josling a Volunteer or Midshipman

Question - Do you recollect the name of any other Officer or crew of the Water Witch ashore on that day I do not

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Question - About how near the Beach was the nearest Barracoon?
About a quarter of a Mile.
Question - And how near was the furthest? Within Half a Mile
Question About how far from the Beach was the Madagascar
lying? Between two and three Miles.
Question - And the Water Witch? Very little nearer.
Question - Do you swear that the Port of Cubinda is not within
the kingdom of Luango or Luando? I swear that it is not
within the kingdom of Luando, but I do not know whether
it is situated within the kingdom of Luango.
Question - Can you swear within what kingdom it is situate?
I cannot.

Re-examined by the Defendants Counsel

Question - Did you see whether anything was brought on s
board by Captain Foote, the Officers, or men after their return
from the Shore? I did not.
Question - Were there any Native Sentries round the Barracoons
besides the other Sentries you have spoken to? There were.
Objected to by the Plaintiffs Counsel — Question - Did you ever see any export trade in the production of Cubinda such as Orchilla, Weed, Ivory or Wax and other Commodities of the Country carried on at that port - No
Question - Do you remember ever going ashore with a Boats
Crew at the Port of Cubinda and being prevented from landing?
I do
Question - Did that occur more than once? No
Question - Did that occur before or after the 23rd May 1842? I believe after.
Question - What prevented you landing? the Natives prevented us.
Question - Did they or did any of them say anything at that
time in reference to your not landing? They did
Question - What did they say? They told us we could not be
permitted to land because it was contrary to a law promulgated
by Principe Jock and the Chiefs.-

was answered by the Witness stating "that he appeared to act as Chief of Principe Sams Town in the Port of Cubinda but ~~
subordinate to Principe Jack as Sovereign of the whole port
The questions and answers within the Bracket were objected to by the Plaintiffs Counsel but I allowed them to be put and answered subject to the opinion of the Court
A similar question as to the station and character which Mamfouca Franque, Mafouca de Pinta de Cubinda and Commodore de Pinta respectively appeared to hold among the natives of Cubinda was answered by the witness stating "That they seemed to be the head men of their respective Chiefs; but he did not know the particular Chief of each" This question and answer were in like manner objected to by the Plaintiffs Counsel.

I have frequently been ashore at Cubinda. I have also been at the three different towns before mentioned and have ~~
mixed a good deal with the natives, and conversed with them and know their habits and customs. The Barracoons are buildings of Wood thatched with Palm leaves and of very slight construction, and are always surrounded with Palisades about ten feet high the buildings consist of stores for the deposit of goods There are also open sheds. I saw in some of these sheds on the 25th of May when I went ashore with Captain Foote, a number of negroes of both sexes and all ages chained together by means of Shackles or chains fastened round their necks and ankles. The barracoon I call the Plaintiffs was the second from the beach. The person in charge of it told Captain Foote in my presence that it was Fonseca's Barracoon. I saw Negroes chained and shackled in the three Barracoons: After visiting Fonseca's and the third Barracoon, Captain Foote and myself returned to the first Barracoon which we had gone to on landing

and which was nearest to the Beach. It was shortly after this that Principe Jack and the other persons came to us there. Captain Foote told me to assemble them all in the Barracoon

Question. By whom did Captain Foote send the message you have spoken of. Answer. By me. Did he by that message direct you to do anything? He did. Did you do what he directed? I did. What was it he directed you to do? He directed me to convey to the Chiefs his desire to hold a Palaver or consultation with them

Objected to by Plaintiffs Counsel

What did you do? I obtained the services of a native to convey Captain Footes message to the Chiefs. The native then left me with Captain Footes Message

Objected to by Plaintiffs Counsel

How long was it after the departure of the Messenger that the persons sent for came? Between one and two hours

Objected to by Plaintiffs Counsel

When they came what happened? They were assembled together in the Barracoon under a Shed by Captain Footes orders, Principe Jack taking his seat at the head of them, surrounded by the other Chiefs. I mean by "surrounded" that Principe Jack sat at the head the others in two lines on each side of him. The Europeans present were Capain Foote Lieutenant Matson, Lieutenant Hewast of the Marines, Lieutenant Kenyon, Doctor Burton and myself. There were others but I cannot recollect their names I also think that there were some Spaniards and Portuguese present

Objected to by Plaintiffs Counsel

Question. Do you know what the Spaniards and Portuguese were?
Answer. They were agents to Barracoons

Objected to by Plaintiffs Counsel

Question. Why do you call them "agents to Barracoons"
Answer. Because I have seen them acting as such

Objected to by Plaintiffs Counsel

Question. For whose Barracoons were they such Agents?
Answer. I dont know: that is I don't know the names of such Owners