The Catharine.

The Schooner Catharine *v.* United States. (*a*)

Dismissal of appeal.

If the counsel for the appellant neglect to furnish the court with a statement of the points of the case, the appeal will be dismissed.

This case was dismissed, because the counsel for the appellant had not furnished the court with a statement of the points of the case, agreeable to the general rule on that subject.

It was afterwards reinstated, by consent of parties.

Bingham and others *v.* Morris and others.

Motion to file and dismiss.

The rule to dismiss a writ of error, for not filing the transcript of the record, within the first six days of the term, does not apply to cases where the transcript shall have been filed before the motion to dismiss.

February 18th, 1812. *Meredith* moved the court to dismiss this appeal, because the transcript of the record was not filed within the first six days of the term, agreeably to the general rule. (3 Cr. 239.) The transcript was filed on the 13th day of the term, and before the motion to dismiss.

The Court (Washington, Justice, absent) said, that they did not consider the rule as applying to any case where the transcript shall have been filed, before the motion for dismissal.

Motion overruled.

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*The Active. (*b*) [*100

The Sloop Active *v.* United States.

Violation of embargo.—Forfeiture of licensed vessel.

The departure of a vessel from the wharf of a port, and proceeding a mile and a half therefrom, with intent to go to sea, is not a departure from the port, within the meaning of the 3d section of the supplementary embargo act of January 9th, 1808, if the vessel had not actually gone out of the port, before seizure.

A licensed fishing vessel is liable to forfeiture (under the 32d section of the act of the 18th of February 1793, for enrolling and licensing vessels), for sailing, laden with goods, with intent to carry them to another place, without a license therefor, although the goods are wholly of domestic growth and manufacture and not liable to any duty.[1]

But such cargo is not liable to forfeiture, unless it belong to the master, owner or a mariner of the vessel.

The Active, 1 Paine 247, reversed, in part.

This was an appeal from the sentence of the Circuit Court of the district of Connecticut, which affirmed that of the district court, condemning the sloop Active and cargo.

(*a*) February 13th, 1812. Absent, Washington, Justice.
(*b*) February 19th, 1812. Present, all the judges.

[1] The Nymph, 1 Ware 257; s. c. 1 Sumn. 516.

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The Active.

The libel stated, that the sloop Active was an American vessel, duly enrolled and licensed for the cod-fishery, on the 5th of July 1808, and had given the bond required to be given by such vessels under the several acts of congress laying and enforcing the embargo; and had a permit to depart and be employed in the cod-fishery. That in the night between the 4th and 5th of July, 1808, at the port of New London, there was secretly and unlawfully laden on board her, a cargo consisting of barrels of beef, fish, butter, &c., without the knowledge and not under the inspection of a revenue officer, with intent unlawfully to proceed with the vessel and cargo to some place without the port, harbor and district of New London. That the vessel so laden, left her place at the wharf in the port of New London, in the night, without the knowledge of any custom-house officer, without a license or permit, and without any custom-house papers, and departed therefrom and out of the said port, and proceeded on her said intended unlawful voyage to some place to the custom-house officers unknown. That the cargo was worth more than $600. That the vessel was unlawfully employed in trade other than that for which she was licensed.

The facts of the case appeared to be as stated in the libel, except that the vessel was seized in the act of leaving the port, but before she had gone out of the port; and that Gates, the owner of the greater part of the cargo, was neither master, owner nor mariner of the vessel.

*101] **Pitkin* and *Dana*, for the appellants.—Three questions arise in this cause. 1. Whether the vessel and cargo were forfeited by being laden contrary to the 2d section of the act of 25th April 1808 (2 U. S. Stat. 499), which declares, that "no vessel shall receive a clearance, unless the lading shall be made hereafter under the inspection of the proper revenue officers, subject to the same restrictions, regulations, penalties and forfeitures, as are provided by law for the inspection of goods, wares and merchandise imported," &c. 2. Whether she departed from a port of the United States, without a clearance or permit, contrary to the 3d section of the act of the 9th of January 1808. (2 U. S. Stat. 453.) 3. Whether she was employed in any other trade than that for which she was licensed, contrary to the 32d section of the act of February 18th, 1793, for enrolling and licensing vessels. (1 U. S. Stat. 316.)

1. Upon the first question, nothing will be added to the arguments urged in the case of *The Paulina* (*ante*, p. 55). The only penalty, under that act, for lading without the inspection of a revenue officer, is the denial of a clearance. There was no law then in force to punish the intent to violate the embargo. The act of January 9th, 1809 (2 U. S. Stat. 506), first made it penal to lade a vessel with that intent.

The libel does not charge the intent to be to export the cargo to any foreign place, which was the evil intended to be guarded against by all those laws. It was not unlawful, to transport domestic goods from one district to another in the United States. She had given bond according to the provisions of the act of January 9th, 1808 (2 U. S. Stat. 453), not to proceed *102] to any foreign port or place. *The 5th section of the act of January 9th, 1809 (commonly called the enforcing act), first made the vessel liable to forfeiture, for lading without a permit. This is a legislative con-

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fession that the law was not so before. It sanctions our construction of the act of the 25th of April 1808.

2. It appears from the evidence, that the vessel was seized within the port, about a mile and an half from the wharf. She did not "depart from" the port, and is, therefore, not liable to forfeiture under the 3d section of the act of January 9th, 1808.

3. Was the Active engaged in any trade (other than that for which she was licensed) within the meaning of the enrolling act? By the 32d section of that act (1 U. S. Stat. 316), it is declared, "that if any licensed vessel shall be employed in any other trade than that for which she is licensed, such vessel, with her tackle, apparel and furniture, and the cargo found on board her, shall be forfeited." The object of this provision evidently was to prevent smuggling, and other frauds upon the revenue. This is evident from various expressions and provisions in other parts of the act.

Thus, the 33d section provides, that if the cargo belong to a person other than the master, owner or mariners of the vessel so trading, and if the duties on the cargo have been paid or secured according to law, such cargo shall not be forfeited. The reason is, that the revenue cannot be defrauded, if the duties have been paid. If, then, this vessel had been laden with foreign goods, and the duties had been paid, they would not have been forfeited; *à fortiori*, would they be exempt from forfeiture, being American produce and not liable to any duty.

So, in the 4th section of the same act (p. 306), bond is to be given to pay to the United States $1000, *in case it shall appear that the vessel has been employed in any trade, whereby the revenue of the United States has been defrauded, during the time the license was in force; and the master is to take an oath that she shall not be employed in any trade whereby the revenue may be defrauded. By the 5th section, it is declared, that no license shall be in force for carrying on any other business or employment than that for which the vessel is specially licensed; and by the 6th section, every vessel found trading between district and district, or between different places in the same district, without being enrolled and licensed, if laden with goods, the growth or manufacture of the United States only (distilled spirits excepted), or in ballast, shall pay foreign fees and tonnage, but if she has any articles of foreign growth or manufacture, or distilled spirits, the vessel and cargo shall be forfeited. [*103

The license which the sloop Active had for the cod-fishery, not being in force for the coasting trade, she was found trading between different places in the same district, without a license, and therefore, was within the 6th section of the act; and being laden only with domestic produce, was only liable to pay foreign fees and tonnage.

By the 8th section, if a vessel, enrolled and licensed, shall proceed on a foreign voyage, without giving up her enrolment and license, and being registered, such vessel, and the goods so imported therein, shall be liable to forfeiture. Under this section, the vessel must actually make the foreign voyage, and import goods, before she can be forfeited. The 12th section authorizes a change of the master, and requires the new master, or the owner, to make oath that the vessel shall not, while the license continues in force, be employed in any manner whereby the revenue may be defrauded. By the 21st section, a licensed fishing vessel, trading to a foreign port, without a

license or permit therefor, is only liable to forfeiture, in case she be found within three leagues of the coast, with foreign goods on board to the value of $500. Domestic goods found on *board are not liable to forfeiture. *104] It cannot, therefore, be supposed that the legislature intended to render such a vessel liable to forfeiture, for carrying domestic goods, upon which no duties were payable, from one part of a port to another.

The act of taking on board certain domestic goods, and carrying them from one part of the port to another, is not such a trade as was contemplated in the 32d section of the act. Such a construction would be contrary to the spirit of the whole act. All that can be said is, that she took in the goods with intent to trade; but this is not trading. Such an intent is not punishable.

Dallas, Attorney of the United States for the District of Pennsylvania, and *Pinkney*, Attorney-General of the United States, for the appellees.—The parties engaged in this transaction were conscious that it was an unlawful business. This vessel was confined by law to the cod-fishery: she could not lawfully carry on the coasting trade. She was laden in the night, and was towing out of the harbor, when she was seized. Gates, who claims the cargo, appears to be master for that voyage; at least, he had the use of the vessel, and was on board, and there was no other master. 1. The first inquiry is, whether this vessel is liable to forfeiture under the embargo law? and 2. Whether she is liable, under the enrolling and licensing act?

1. She departed from a port of the United States without a clearance or permit, contrary to the act of January 9th, 1808, § 3 (2 U. S. Stat. 453). To depart from a port, does not mean to go out of the port. She departed from the port, when she set sail to leave the port—when she broke ground. This is the construction always given to policies, when the insurance is from (not at and from) a certain port.

*2. The protection of the revenue was not the only object of the *105] prohibition to use the license for another purpose than that for which it was given. It was material to know in what kind of trade every vessel was engaged. All the sections which have been cited show that it was the intention of the legislature, to prohibit the vessel from engaging in any other employment than that for which she was licensed, although such employment should not in any manner affect the revenue. It is a plain and express prohibition, under the penalty of forfeiture of vessel and cargo; and it is unnecessary to inquire into the motives of the legislature. She was engaged in the business of carrying goods from one place to another; and this was an employment or trade for which she had no license. She was as much engaged in trade, at the inception, as she would have been at the consummation of the voyage. It was not necessary that she should have finished the voyage, or have been engaged in buying and selling.

February 26th, 1812. MARSHALL, Chief Justice, delivered the opinion of the court, as follows:(*a*)—The sloop Active, a vessel licensed for the fishing trade, was laden, in the night of the 4th of July, in the year 1808, in the port of New London, and was seized by the revenue officer, after having left the wharf, without a clearance, under circumstances which justify a belief

(*a*) Judge TODD was absent, in consequence of indisposition.

that she was about to proceed on a foreign voyage, in violation of the acts laying an embargo. The vessel and cargo were libelled as having been forfeited under the laws of the United States, and were both condemned in the district court, which sentence was affirmed in the circuit court.

This sentence is supported on the part of the United States, under the 3d section of the supplementary act to the act laying an embargo, and the 32d section of the act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries.

*This court is of opinion, that however criminal the intentions of those on board the Active might have been, neither the vessel nor cargo [*106 were forfeited, under the 3d section of the "act supplementary to the act, entitled an act laying an embargo on all ships and vessels in the ports and harbors of the United States," because she appears to have been seized in port; and a departure from port, without a clearance, was necessary to consummate the offence.

The case is undoubtedly within the words of the 32d section of the enrolling and licensing act. The Active was a licensed vessel employed in a trade other than that for which she was licensed.

The argument that this act was intended merely to secure the revenue, and that its provisions do not contemplate a vessel laden with domestic produce not subject to duty, has been urged with great force, and certainly derives much strength from the various sections of the act which have been quoted. But the words of the 32d section are explicit, and although other preceding sections furnish much reason for believing that a forfeiture in a case where the revenue could not be defrauded, might not be contemplated by the legislature, yet they are not so expressed as to control the 32d section. The Active and her cargo, therefore, must be considered as forfeited, except so far as they come within the 33d section. That section is in these words: "Provided, nevertheless, and be it further enacted, that in all cases where the whole or any part of the lading, or cargo on board, any ship or vessel, shall belong, *bonâ fide*, to any person or persons other than the master, owner or mariners of such ship or vessel, and upon which the duties shall have been previously paid or secured, according to law, shall be exempted from any forfeiture under this act, anything therein contained to the contrary notwithstanding."

"In this case, the libel states, that ——— Billings and —— Morgan were owners of the vessel, and a certain —— Gates, owner of the cargo. A claim is filed by Billings and Morgan for the vessel and part of *the cargo, and by Gates, for the residue of the cargo. It appears, then, both [*107 from the libel and claim, that a part of the cargo did "belong, *bonâ fide*, to a person other than the master, owner or mariners of the ship or vessel." This part of the cargo comes completely within that part of the description which relates to the ownership of the property. But the goods on board being liable to no duty, the duties could not have been previously paid or secured.

The court considers this section as manifesting a clear intention in the legislature to exempt from forfeiture a cargo not belonging to the owner, master or mariners, provided that cargo was not liable to duties. Whether this condition was produced by a previous payment of duties, or by a perfect exemption from duties, must be immaterial. Duties cannot be paid or

secured, according to law, on goods not liable, by law, to duty. The legislature must be understood, when saying "upon which the duties have been previously paid or secured according to law," to mean, "upon which the duties, if any, have been previously paid," &c.

It is the opinion of the court, that the sentence of the circuit court be reversed as to so much of the cargo of the sloop Active as is claimed as the property of ——— Gates, and be affirmed as to the vessel and the residue of the cargo. And it is directed, to be certified, that there was probable cause of seizure.

The Clarissa Claiborne. (*a*)

Hawthorn, Claimant of the Brig Clarissa Claiborne, *v.* United States.

Evidence on appeal in admiralty.

This court will grant a commission to take new evidence to be used here, in a case of admiralty jurisdiction.

This was an appeal from the sentence of the District Court at New Orleans, condemning the brig Clarissa Claiborne, for violating a law of the United States.

*108] *Hare* moved for a *certiorari*, upon a suggestion of diminution of the record, in not sending up the depositions of the witnesses.

Marshall, Ch. J.—What prevents you from producing the witnesses here, or taking their depositions *de novo?*

Hare suggested a doubt, whether cases for violation of the embargo, are cases of admiralty, or of prize jurisdiction.

However, on a subsequent day he moved for, and obtained a commission to take the depositions of witnesses at New Orleans, to be used on the trial in this court, at the next term.

A like commission was granted in the case of *Williams* v. *Armroyd*, at this term.

United States *v.* John Goodwin.

Appellate jurisdiction.

No writ of error lies to the supreme court of the United States, to reverse the judgment of a circuit court in a civil action, which has been carried up to the circuit court from the district court, by writ of error.[1]

This was an action of debt, brought originally in the District Court for the district of Pennsylvania, by the United States, against John Goodwin, for $15,000, as a penalty for not entering goods agreeable to the prime cost

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(*a*) February 20th, 1812. Present, all the judges.

[1] United States *v.* Gordon, *post*, p. 287; United States *v.* Barker, 2 Wheat. 395; Sarchet *v.* United States, 12 Pet. 143. But afterwards remedied by statute, see R. S. § 691.