

The Good Catharine.

should have been changed. It is peculiarly unfortunate, that these circumstances cannot be explained away, by showing that the goods have been *348] entered elsewhere, or even *that the claimant has purchased such goods from any person whatever.

These combined circumstances furnish, in the opinion of the court, just cause to suspect that the goods, wares and merchandise against which the information in this case was filed, have incurred the penalties of the law.

But the counsel for the claimant contends, that this is not enough to justify the court in requiring exculpatory evidence from his client. Guilt, he says, must be proved, before the presumption of innocence can be removed. The court does not so understand the act of congress. The words of the 71st section of the collection law, which apply to the case, are these: "And in actions, suits or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case, the *onus probandi* shall be upon such claimant." "But the *onus probandi* shall be on the claimant, only where probable cause is shown for such prosecution, to be judged of by the court before whom the prosecution is had."

It is contended, that probable cause means *prima facie* evidence, or, in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation. This argument has been very satisfactorily answered on the part of the United States, by the observation, that this would render the provision totally inoperative. It may be added, that the term "probable cause," according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure, has a fixed and well-known meaning. It imports a seizure made under circumstances which warrant suspicion. In this, its legal sense, the court must understand the term to have been used by congress.

The court is of opinion, that there is no error, and that the judgment be affirmed, with costs.

Judgment affirmed.

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*THE GOOD CATHARINE. (a)

The Schooner GOOD CATHARINE v. UNITED STATES.

Foreign vessel.—Forfeiture.

A vessel of the United States, captured, condemned, sold, and purchased by her former master, a citizen of the United States, who obtains a Danish burgher's brief, and who cleared out of a port of the United States, as a Dane, is a foreign vessel, within the 5th section of the act of 9th January 1808, supplementary to the embargo act, although she was really owned by a citizen of the United States.¹

THIS was an appeal from the sentence of the Circuit Court for the district of Maryland, which condemned the schooner Good Catharine, as a foreign vessel, for a violation of the 5th section of the act of January 9th, 1808, supplementary to the embargo act (2 U. S. Stat. 453), which declares, "that if any foreign ship or vessel shall take on board any specie, or any

(a) February 19th, 1813. Absent, LIVINGSTON and TODD, Justices.

¹ The Sally and Cargo, 1 Gallis. 58.

Bond v. Jay.

goods, wares or merchandise, other than the provisions and sea-stores necessary for the voyage, such ship or vessel, and the specie and cargo on board, shall be wholly forfeited."

She was originally an American vessel, but had been captured and condemned as prize, and purchased by Hurst, her former master, an American citizen. She took on board goods other than the provisions and sea-stores necessary for the voyage, and cleared out as a Dane.

Martin, for the appellant, contended, that notwithstanding these circumstances, the vessel, being really American, could not be condemned under that section of the law; for in criminal cases, there can be no estoppel. A man may prove the truth of the case against his own averment.

Pinkney, Attorney-General, relied upon the capture, condemnation and sale, and the Danish burgher's brief, which the master had obtained, to show that she was a foreign vessel.

The sentence of the circuit court was affirmed.

*BOND and another v. JAY. (a)

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Statute of limitations.

The exception, in the Maryland statute of limitations, in favor of "such accounts as concern the trade or merchandise between merchant and merchant, their factors and servants, which are not residents within this province," applies to dealings between a merchant-creditor, residing out of Maryland, and a debtor residing in Maryland.

And in order to take the case out of the exception, it is not sufficient to aver, that the creditor returned to, came, and was within the state of Maryland, after the cause of action accrued, and more than three years before bringing the suit.

ERROR to the Circuit Court for the district of Maryland, in an action of *assumpsit*, brought by Bond & Brooks against Jay, surviving partner of Samuel Jay and Gabriel Christie, trading under the firm of Samuel Jay & Company, upon an account for merchandise sold and delivered.

The defendant, Jay, pleaded the statute of limitations of Maryland, 1715, c. 23, which limits actions of *assumpsit* to three years after the cause of action shall have accrued. To this plea, the plaintiffs replied, "that at the time when the several sums of money in the declaration mentioned grew due, viz., on the 20th of March 1799, and long before, to wit, on the 27th of November 1797, and from thence until the said 20th of March, and from the said last-mentioned day until the suing forth the original writ in this suit, the plaintiffs were merchants, carrying on trade and merchandise under the name and firm of Bond & Brooks, and residing and carrying on trade without the limits of the district aforesaid, and of the state of Maryland, viz., at Philadelphia, in the state of Pennsylvania; and that at the several times aforesaid, the said Jay and Christie were merchants, trading under the firm of Samuel Jay & Company, and residing and carrying on trade at and within the district aforesaid, and that on the said several days, and on sundry days from the first of those days to the second of those days, the plaintiffs were engaged in mutual trade and merchandise with the said Jay

(a) February 20th, 1813. Absent, Todd, Justice.