without limitation upon the occurence of any subsequent combination of events.

On the question when the operation of the 4th section of the act should commence, we are of opinion, that by reviving an act, the legislature must be understood to give it, from the time of its revival, precisely that force and effect which it had at the moment when it expired. *And that *389] a suspended operation to the 20th May, would be wholly inconsistent with the words made use of in the 4th section of the act of May 1810, viz: "shall be revived and have full force and operation," and therefore, that its operation commenced on the 2d February 1811.

Some objections have been made to the sufficiency of the libel, because it does not negative the fact of American property. But on that subject, we are of opinion, that in no case can it be necessary to state in a libel, any fact which constitutes the defence of the claimant, or a ground of exception of the operation of the law on which the libel is founded.

Sentence affirmed.

The Hoppet. (*a*)

The Schooner Hoppet and Cargo *v.* United States.

Non-intercourse law.—Information for forfeiture.

Wines, the produce of France, imported into the United States, before the non-intercourse act, re-exported to a Danish island, there sold to a merchant of that place, and thence exported to New Orleans, during the operation of that act of congress, were liable to forfeiture, under that law.

An information in the admiralty for a forfeiture, must contain a substantial statement of the offence. A general reference to the provisions of the statute, is not sufficient.[1]

If the information be defective in that respect, the defect is not cured, by evidence of the facts omitted to be averred in the information.

The decree must be *secundum allegata*, as well as *secundum probata*.[2]

This was an appeal from the sentence of the District Court for the district of Orleans (exercising the jurisdiction of a circuit court of the United States), condemning the schooner Hoppet and her cargo, as forfeited to the United States, under the act of congress of March 1st, 1809 (2 U. S. Stat. 529), entitled "An act to interdict the commercial intercourse between the United States and Great Britain and France and their dependencies, and for other purposes." The 4th section of that act makes it unlawful "to import into the United States or the territories thereof, from any foreign port or place whatever, any goods, wares or merchandise whatever, being of the growth, produce or manufacture of France, or of any of her colonies or dependencies," or of any country in the possession of France. By the 5th section, it is enacted, "that whenever any article or articles, the importation of which is prohibited by this act, shall, after the 20th of May, be imported *into the United States, or the territories thereof, contrary to the true *390] intent and meaning of this act," such articles, as well as all other

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(*a*) February 19th, 1813. Absent, Livingston and Todd, Justices.

[1] The Little Charles, 1 Brock. 347.

[2] United States *v.* Crates of Earthenware, 3 Wheat. 232; The Clement, 2 Curt. 363; The Eddy, 5 Wall. 481; Pettingill *v.* Dinsmore, 2 Ware 208; The Uncle Sam, 1 McAllister 77; The Fashion, 6 McLean 195; The Rhode Island, Olcott 505; Davis *v.* Leslie, 1 Abb. U. S. 123.

articles on board the same ship or vessel belonging to the owner of such prohibited articles, shall be forfeited." And by the 6th section, it is enacted, "that if any article or articles, the importation of which is prohibited by this act, shall, after the 20th of May, be put on board of any ship or vessel," "with intention to import the same into the United States, or the territories thereof, contrary to the true intent and meaning of this act, and with the knowledge of the owner or master of such ship or vessel," "such ship or vessel shall be forfeited."

The information against the vessel did not aver that the goods were put on board the vessel with intention to import the same into the United States, or the territories thereof, contrary to the act, with the knowledge of the owner or master of the vessel; nor did the information against the cargo state that such of the goods as were not prohibited belonged to the owner of the prohibited goods; but both informations averred generally that the goods were imported contrary to the 4th, 5th and 6th sections of the act.

It appeared from the evidence and admissions in the case, that the wines, which constituted the principal part of the cargo, were the produce of France, and had been shipped from New York to the Danish island of St. Bartholomews, where they were purchased by a merchant of that place and shipped to New Orleans. It did not appear certainly, whether they had been imported into New York, since the 20th of May, referred to in the act of congress.

Harper, for the appellants, contended, that it was probable, from all the circumstances, that the wines had been imported into the United States, before the prohibition, and if so, they had become incorporated with the general commerce of the country, and had lost their national character as French produce. He also insisted on the defect in the informations, as stated above.

**Pinkney*, Attorney-General, and *Law*, contrà.—The letter of the law is too plain to admit of construction. These wines never could [*391 cease to be the produce of France. They were imported from a foreign place, into a territory of the United States, during the prohibition by law. If they had acquired an American character, it was lost, by receiving the drawback. It does not appear, that they were imported into New York before the prohibition. If they had been, the proof was so easy, that the want of it creates the strongest presumption that the fact was not so.

The intent is only to be known by the act of the owners. They were bound to know the laws of the country to which they were trading. It is sufficient for the United States, to prove a knowledge that the goods were put on board for that voyage.

February 27th, 1813. MARSHALL, Ch. J., delivered the opinion of the court, as follows:—This is an appeal from a sentence of the court for the district of Orleans, condemning the schooner Hoppet and her cargo, as forfeited to the United States, for violating the non-intercourse law.

In the district court, two informations were filed by the attorney for the United States, one claiming the ship as being forfeited, and the other claiming the cargo. Objections have been made to each of these informations, which will be separately considered.

The information against the vessel charges, in substance, that while the act, entitled "an act to interdict commercial intercourse," &c., was in force, certain goods, of the growth, produce or manufacture of France, were imported into the United States, to wit, into the port of New Orleans, in the said vessel, from some foreign port or place, to wit, from St. Bartholomews, contrary to, and in violation of the 4th, 5th and 6th sections of the act. By reason of which, and by virtue of the act of congress, entitled "an act," &c., the said vessel, her tackle, apparel and furniture have become forfeited to the United States.

*392] *The charge contained in this information, and the only charge it contains is, an importation into the United States of certain prohibited articles, while the prohibitory act was in force. How far does this crime affect the vessel? This question must be answered by the law. The 6th section of the act enacts, in substance, that if any article, the importation of which is prohibited, shall be put on board of any ship, &c., with intention to import the same into the United States, or the territories thereof, contrary to the true intent and meaning of this act, and with the knowledge of the owner or master of such ship, &c., such ship, &c., shall be forfeited.

This is the only section of the act which imposes a forfeiture on the vessel. It will be perceived, that the crime consists in the prohibited articles being laden on board a ship, with intent to be imported into the United States, and with the knowledge of the owner or master of the vessel. A union of a lading, with the intention to import, and with the knowledge of the owner or master, is necessary to constitute the crime. Without these essential ingredients, the particular offence, which alone incurs a forfeiture, cannot be committed. In the information under consideration, neither of these offences is charged. It is neither alleged that the prohibited goods were put on board the ship, with intention to be imported into the United States, nor with the knowledge of the owner or master.

The information against the cargo charges, in substance, that certain prohibited articles, and certain other articles, not stated to be prohibited, were brought into the United States, to wit, into the port of New Orleans, while the act, entitled "an act to interdict commercial intercourse" &c., was in force, from some foreign port or place, by reason of which, and by virtue of the act, the whole cargo of the Hoppet has become forfeited. The 5th section of the act under which this prosecution was sustained, inflicts forfeiture on the prohibited articles imported contrary to law, and also on

*393] "all other articles on board the same ship or vessel, boat, *raft or carriage, belonging to the owner of such prohibited articles. The innocent articles are liable to forfeiture only where they belong to the owner of the prohibited articles. It is this association, and this alone, which constitutes their crime. Their being in the same vessel exposes them to no forfeiture, unless they belong to the same person. In the case under consideration, the information does allege that the innocent and the prohibited articles did belong to the same person.

The first question made for the consideration of the court is this: will this information support a sentence of condemnation pronounced against the vessel and the innocent part of the cargo? That the information states a case by which no forfeiture of the ship or the innocent part of the cargo has been incurred, unless its defectiveness be cured by the allegation that

the act was done contrary to, and in violation of the provisions of the statute, has been already fully shown. It is not controverted, that in all proceedings in courts of common law, either against the person or the thing, for penalties or forfeitures, the allegation that the act charged was committed in violation of law, or of the provisions of a particular statute will not justify condemnation, unless, independently of this allegation, a case be stated, which shows that the law has been violated. The reference to the statute may direct the attention of the court, and of the accused, to the particular statute by which the prosecution is to be sustained, but forms no part of the description of the offence. The importance of this principle to a fair administration of justice, to that certainty introduced and demanded by the free genius of our institutions in all prosecutions for offences against the laws, is too apparent to require elucidation, and the principle itself is too familiar not to suggest itself to every gentleman of the profession. Does this rule apply to informations in a court of admiralty?

*It is not contended, that all those technical niceties, which are unimportant in themselves, and standing only on precedents of which the [*394
reason cannot be discerned, should be transplanted from the courts of common law into the courts of admiralty. But a rule so essential to justice and fair proceeding as that which requires a substantial statement of the offence upon which the prosecution is founded, must be the rule of every court where justice is the object, and cannot be satisfied by a general reference to the provisions of a statute. It would require a series of clear and unequivocal precedents, to show that this rule is dispensed with in courts of admiralty, sitting for the trial of offences against municipal law.

It is, upon these and other reasons, the opinion of the court, that the information is not made good by the allegation that the offence was committed against the provisions of certain sections of the act of congress.

Is it cured by any evidence showing that, in point of fact, the vessel and cargo are liable to forfeiture? The rule that a man shall not be charged with one crime, and convicted of another, may sometimes cover real guilt, but its observance is essential to the preservation of innocence. It is only a modification of this rule, that the accusation on which the prosecution is founded, should state the crime which is to be proved, and state such a crime as will justify the judgment to be pronounced. The reasons for this rule are, 1st. That the party accused may know against what charge to direct his defence. 2d. That the court may see with judicial eyes that the fact, alleged to have been committed, is an offence against the laws, and may also discern the punishment annexed by law to the specific offence. These reasons apply to prosecutions in courts of admiralty with as much force as to prosecutions in other courts. It is, therefore, a maxim of the civil law, that a decree must be *secundum allegata* as well as *secundum probata*. It would *seem to be a maxim essential to the due admin- [*395
istration of justice in all courts.

It is the opinion of the court, that this information will not justify a sentence condemning the schooner Hoppet and that part of her cargo which is not alleged to be of the growth, produce or manufacture of either France or Great Britain, or the dependencies of either of those powers, whatever the fact may be.

There are certain wines imported in this vessel, alleged to be of the

growth, produce, or manufacture of France. These wines were exported from the United States to St. Bartholomews, where they were purchased by the consignee and shipped to New Orleans. It is contended, that having been imported into the United States, previous to the passage of the non-intercourse law, their exportation and re-importation does not subject them to the penalties of that law. But the court is unanimously of opinion, that they come completely within the provisions of the act of congress. It is the opinion of the court, that there is no error in that part of the sentence of the district court of Orleans, which condemns the wines in the information mentioned as forfeited to the United States, but that there is error in that part of the sentence which condemns the schooner Hoppet and the residue of her cargo.

This court doth, therefore, adjudge and order, that so much of the sentence of the district court as condemns the schooner Hoppet and the thirty-five hogsheads of molasses, five barrels of molasses, twelve dozen of cocoa-nuts and twelve pounds of starch, part of the cargo of the said schooner, be and the same is hereby reversed and annulled; and the said sentence, as to the residue of the cargo, is in all things affirmed.

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*396] *Mutual Assurance Society *v.* Korn and Wisemiller. (*a*)

Mutual insurance company.

The proprietors of buildings in Alexandria, insured by the society, were bound, by the act of assembly of Virginia, passed in 1805, and the subsequent regulations of the society, to pay an additional premium upon the increased rate of hazard, according to the new regulations of 1805.

Error to the Circuit Court for the district of Columbia, sitting at Alexandria.

The Mutual Assurance Society against fire, &c., was incorporated by an act of the legislature of Virginia, in 1795. According to the original plan of the institution, the houses in the towns and country were blended together in one general mass, and were mutually pledged to each other, to make good the losses which might be respectively sustained by fire. In January 1805, the legislature of Virginia, at the request of the society, passed a law changing the original plan of the institution, by separating the town buildings from those in the country, and making the town buildings liable only for town losses, and the country buildings for country losses. This law directed that there should be a re-valuation of the buildings which had been previously insured; and authorized the society, as in the first instance, to fix the rates of hazard, and make such by-laws, rules and regulations as they might think proper. The society was authorized to recover its debts, by motion, in a summary manner.

Under the act of 1805, the society made a new tariff of rates of hazard. The houses of the defendants were re-valued under the act. The re-valuation was less than the original valuation; but the rate of hazard, or in other words, the premium for the insurance, was increased under the new regulation.

*397] *By the third section of a by-law of the society, made in January 1805, under the authority of their original act of incorporation and of

(*a*) February 16th, 1813. Absent, Washington, Justice.