an interest in confining a jury as much as possible to their proper sphere which is to decide on facts; while a court does not encroach on their province, care should be taken not to encourage any improper encroachment on their part, by unnecessarily throwing on them any exercise of what are the legitimate functions of a court. Among these, none appear to me to be better settled, than that it is the exclusive privilege and bounden duty of a court, to decide whether an act, which is to be done within a reasonable time, to entitle a party to maintain his action, has been performed within such time, or not. So also, where a party sets up an excuse for an act which will otherwise defeat his right to recover, it appertains exclusively to the court, to decide on the sufficiency of the matter alleged; and if a jury, after deciding on the facts, take upon themselves the further office of determining the legal effect thereof, as to the case under consideration, in opposition to the declared opinion of the court, they forget their duty and act contrary to law.

But if this be a question of law, the plaintiff still supposes, that the circuit court erred, in not thinking that the facts proved, constituted a valid excuse for the last forty days' stay at Barcelona, and in not instructing the jury accordingly. This excuse was, in my opinion, properly disposed of by the judge below, but instead of stating at length why I consider the alleged apprehension of capture by the Algerines as furnishing no justification for this delay, it is sufficient to say, that I entirely concur, not only in the opinion which has already been delivered on this point, but in the whole of the reasoning on which it is founded.

Story, J., concurred with Judge Livingston.

*Marshall, Ch. J.—My own opinion was, that the jury was to find the fact, whether there was danger in passing between Barcelona and Salou; and that they ought to have been instructed, that if there was danger, it justified the delay, otherwise not. [*496

Judgment affirmed.

The Caroline. (a)

The Brig Caroline, William Broadfoot, claimant, *v.* United States.

Slave trade.—Information.

A libel for a forfeiture must be particular and certain in all the material circumstances which constitute the offence.[1]

An informal libel, or information *in rem*, may be amended, by leave of the court.[2]

Error to the Circuit Court for the district of South Carolina, in a case of seizure for violation of the acts of congress respecting the slave trade. The libel was in the words following:

"At a special district court for South Carolina district: Be it remem-

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(a) February 24th, 1813.

[1] The Anne, *post*, p. 570; The Little Charles, 1 Brock. 347. See the Emily and Caroline, 9 Wheat. 381; United States *v.* Ward, 5 Wall. 68–9; United States *v.* Huckabee, 16 Id. 431; United States *v.* Mann, 95 U. S. 586; United States *v.* Simmons, 96 Id. 365.

[2] See The Edward, 1 Wheat. 261; The Maybey, 10 Wall. 420.

bered, that on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, the United States of America, by Thomas Parker, their attorney for the district aforesaid, came here into court, and gave Thomas Bee, Esq., judge of the said court, to understand and be informed, that on the ——— day of ——— they, the said United States, by their proper officers of the customs, did cause to be seized, arrested and secured, a certain brig or vessel called the Caroline, her tackle, furniture, apparel and other appurtenances, as forfeited to them, the said United States; for that the said brig or vessel, since the 22d day of March 1794, was built, fitted, equipped, loaded, or otherwise prepared, within a port *or* place of the said United States, *or* caused to sail from a port or place of the said United States, by a citizen *or* citizens of the said United States, *or* a foreigner, *or* other persons coming into, *or* residing in the same, *either* as master, factor *or* owner of the said brig *or* vessel, for the purpose of carrying on trade *or* traffic in slaves to a foreign country; and also, for that
*497] the said brig or vessel, since the day and year last aforesaid, *was built, equipped, loaded *or* otherwise prepared, within a port *or* place of the said United States, *or* caused to sail from a port *or* place within the said United States by a citizen *or* citizens of the said United States, *or* a foreigner *or* other persons coming into or residing within the same, *either* as factor, master or owner of the said brig *or* vessel, for the purpose of procuring from a foreign kingdom, place *or* country, the inhabitants of such kingdom, place *or* country, to be transported into a foreign place *or* country, port *or* place, to be disposed of and sold as slaves, in violation of a certain act of congress of the said United States, passed the 22d March 1794, entitled 'an act to prohibit the carrying on the slave-trade from the United States to any foreign place or country.' Also, for that since the 1st day of January 1808, the said brig *or* vessel was built, fitted, equipped, loaded *or* otherwise prepared, in some port *or* place within the jurisdiction of the said United States, *or* caused to sail from some port *or* place within the said United States by some citizen *or* citizens of the said United States, *or* some other person, for the purpose of procuring negroes, mulattoes, *or* persons of color from *some* foreign kingdom, place *or* country, to be transported to some port *or* place within the jurisdiction of the said United States, to be held, sold *or* disposed of as slaves, *or* to be held to service *or* labor, in violation of a certain act of congress of the United States, passed the 2d day of March, in the year of our Lord 1807, entitled 'an act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States from and after the first day of January, in the year of our Lord 1808.' Wherefore, the said United States, by Thomas Parker, their attorney aforesaid, pray the advice and opinion of this honorable court in the premises, and that on due proof of the allegations aforesaid, the said brig or vessel, her tackle, apparel, furniture and other appurtenances, may be decreed and adjudged as forfeited to them, the said United States, and that such proceedings may be had thereon as are agreeable to law and justice, and the style, usage and practice of this honorable court." THOMAS PARKER,
Attorney U. States, S. C. District."

*498] *To the transcript of the record which came up, was annexed the following statement of facts:

"The information which was filed in this case against the Caroline was founded upon an alleged violation either of the 1st section of an act of congress, passed the 22d March 1794, entitled 'an act to prohibit the carrying on the slave-trade from the United States to any foreign place or country,' or of the 2d section of an act, passed on the 2d of March 1807, entitled 'an act to prohibit the importation of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord 1808.' By the act of 1794, the fitting or sailing of a ship, for the purpose of a traffic in slaves to any foreign country, subjects the ship, concerned in such traffic, to forfeiture."

"The act of 1807 enacts, that if any ship within the jurisdiction of the United States shall be fitted out, or caused to sail, by any person, either as master, factor or owner, 'for the purpose of procuring any negro, mulatto or person of color from any foreign country, to be transported to any place whatsoever, within the jurisdiction of the United States, to be held, sold or disposed of as slaves, or to be held to service or labor,' she shall be forfeited to the United States. It was admitted by the claimant, that the Caroline came into this port, equipped like any common merchant vessel, that she did, after her arrival, receive fitments and take on board articles calculated for the slave-trade only It was satisfactorily proved, that the claimant, after receiving information that such equipments were illegal, restored the Caroline to the condition in which she was when she entered this port, but that this was not done till after her seizure; and that the wooden parts of the fitments for slaves were marked as they were taken out of the vessel. That in such condition, she left Charleston, bound to the Havana and to no other port. That she arrived at the Havana, on the 28th of June 1810, and that there she was sold, about the 6th of August 1810, to Spanish subjects, who fitted her out for the African slave-trade. His honor, the circuit judge, upon the ground of sufficient evidence having been adduced of intention to carry on the slave trade, either *abroad or at home, and a consequent violation either of the act of 1794, or of the act of 1807, decreed that the Caroline should be condemned as forfeited to the United States. We agree in the above statement of the case. [*499

William Drayton, Proctor for Appellant.
Thomas Parker, District-Attorney."

C. Lee, for the appellant, contended, 1st. That the libel was not sufficient to support the condemnation: and 2d. That the offence was not made out in point of fact.

1. The libel does not state any certain specific offence. It is altogether in the alternative. It does not state when, nor where, nor by whom, the vessel was seized; nor when, nor where, nor by whom, nor in what manner, the vessel was fitted out. It is altogether vague, uncertain and informal. An information *in rem* ought to be as precise and formal as an information *in personam*. The civil law requires that a libel should be certain and positive in all material circumstances.

2. The statement of facts is as imperfect as the libel. The vessel is only liable to forfeiture, when she shall have been actually fitted, equipped or prepared, not while she is fitting, equipping or preparing. The degree of equipment ought to have been stated, that the court might judge whether

it were such fitting, or equipment as is contemplated by the law. Upon every information for a penalty, the offence should be fully proved. Parker 22. This case is like that of *Moodie* v. *The Ship Alfred*, 3 Dall. 307; in *500] which this court decided, *that the ship was not illegally fitted out, although she had taken on board some articles calculated for war.

J. R. Ingersoll, contrà, contended, that the case and the libel were sufficiently explicit. The intent was clearly shown. It is not necessary, that everything necessary for the voyage should be on board, before the forfeiture accrues. The libel states the offence in the words of the act of congress.

The Court, after taking time to consider, directed the following sentence to be entered: "This cause came on to be heard on the transcript of the record, and was argued by counsel, on consideration whereof, it is the opinion of the court, that the libel is too imperfectly drawn, to found a sentence of condemnation thereon. The sentence of the said circuit court is, therefore, reversed, and the cause remanded to the said circuit court, with directions to admit the libel to be amended."(*a*)

The same point was also decided at this term, in the cases of *The Schooner Hoppet; The Schooner Enterprise; The Ship Emily*, and *The Schooner Ann.*

(*a*) The ground upon which the sentence of this court was founded, is understood to be as follows: The only offenses in the statute of 22d March 1794, ch. 11, for which a vessel could be forfeited, are that the same vessel is "fitted out" or "caused to sail" for the purpose of carrying on the slave-trade. The libel in this case alleges, in the alternative, that the brig Caroline "was built, equipped, loaded, *or* otherwise prepared," &c., *or* "caused to sail," &c., for the purpose of carrying on the slave-trade. It does not, therefore, positively allege that the vessel "was fitted out" or "caused to sail;" and the libel might be true, in the manner in which the charge was stated, and yet no offence committed, which would induce a forfeiture of the vessel. For if the vessel was "built, or loaded, or prepared," for the purpose of the slave-trade, the alternative averment in the libel would be completely satisfied; and yet, if she was not "fitted out," or "caused to sail," she could not be forfeited.[1] The facts, therefore, constituting the offence, not being directly averred, the libel could not be sustained. But the court did not mean to decide, that stating the charge in the alternative would not have been sufficient, if each alternative had constituted an offence for which the vessel would have been forfeited. The same observations are applicable to the count founded on the act of 2d of March 1807, ch. 67.[1]

[1] See The St. Jago de Cuba, 9 Wheat. 409; *v.* Gooding, 12 Id. 460; The Sarah, 2 Wall. The Plattsburgh, 10 Id. 133; United States 371.