necessarily arise in the progress of every contested action, and which in Great Britain have never yet been assigned for error.

JOHNSON, J., said, he did not wish it to be understood, that a writ of error would lie to a decision within the diseretion of the court below.

STORY, J., said, he did not mean to be understood, in delivering the opinion of the court, as stating that the refusal to compel a party to join in demurrer to evidence *was a ground for a writ of error. He con-
*570] curred in opinion with Judge Livingston.

MARSHALL, Ch. J.—On that point, the court has not given any opinion. The former opinions of this court on the subject of discretion, &c., are to be considered as law; but they are not to be extended further.

Judgment reversed.

The Schooner ANNE. (*a*)

The Schooner ANNE *v.* UNITED STATES.

Pleading in admiralty.

A libel may be amended, after reversal, for want of substantial averments.[1]
A libel must aver specially all the facts which constitute the offence.
The non-intercourse act of March 1st, 1809, was in force between the 2d of February and 2d of March 1811, by virtue of the president's proclamation of November 2d, 1810.
The Aurora, *ante*, p. 382; and The Hoppet, *ante*, p. 389, re-affirmed.

THIS was an appeal from the sentence of the Circuit Court for the district of South Carolina, condemning the schooner Anne, for violation of the non-intercourse law of March 1st, 1809, § 6. (2 U. S. Stat. 529.)

C. Lee, for the appellant.—1. The libel in this case is too imperfect, to warrant a sentence of condemnation. It does not state what kind of goods were taken on board; it merely says, certain articles prohibited by law. If they were French goods, it was lawful to take them on board. This is a penal prosecution, and this court has decided at this term in the case of *The Hoppet* (*ante*, p. 389), that the offence must be specially set forth in the libel. The place of lading is not stated, nor the time, so that it may be known, whether the act was done, while the law was in force. It does not state whether the goods were put on board, with the knowledge of the owner, or with the knowledge of the master, but without naming either the master or the owner, it says, in the alternative, that the goods were put on board with the knowledge of the owner or master. The evidence cannot cure the defects of the libel.

2. When these goods were put on board (between the 2d of February and the 2d of March 1811), the act of *March 1st, 1809, was not in
*571] force, unless by virtue of the president's proclamation of November 2d, 1810. That proclamation is not set forth in the libel, so that the act done does not appear by the libel to be contrary to law. The libel ought to

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(*a*) March 11th, 1813. Absent, TODD, Justice.

[1] The Mary Ann, 8 Wheat. 380.

have stated that France had, before the 2d of March 1811, so revoked her edicts, as that they ceased to violate the neutral commerce of the United States ; and that the president had declared it by his proclamation. This is not like the revival or continuance of a law, by a law ; but when the revival of a law is to depend upon a matter of fact, the libel ought to state the fact, that the court may judicially know whether the law be revived or not.

STORY, J.—This court has decided, at this term, that the act of March 1st, 1809, was in force in February 1811.

C. Lee.—If that point has been decided, it was when I was not present, and shall forbear to make any further observations ; but if it had not been decided, I should have adduced the new evidence communicated to congress by the late documents, to show, that in March 1811, the Berlin and Milan decrees were not repealed, and that the repeal did not take place until the 28th of April.

JOHNSON, J.—That point was considered in the case of *The Aurora* (*ante*, p. 382).

Jones, contrà.—The cases of *The Hoppet* and *The Aurora* have settled all the points in this case, except the omission to state in the libel the president's proclamation. The court can take notice of the law, and therefore, can notice the proclamation authorized by that law.

JOHNSON, J.—That point was decided in *The Aurora.*

Jones.—Then, as to the objections to the form of the libel. This is not a case in which the appellant could plead not guilty, and put the United States upon the proof of everything alleged. But he is to put in his claim upon oath, like an answer to a bill in chancery. *All that is necessary in [*572
the libel is to state, generally, the grounds on which the forfeiture is claimed. By referring to the law, it is made certain. It is clear, by the terms of the law alluded to in the libel, that the goods must have been of British growth or manufacture ; and such was the proof in the case. The doctrines relative to indictments at common law do not apply to the case.

March 16th, 1813. MARSHALL, Ch. J.—The sentence of the circuit court, in this case, must be reversed, for the defects in the libel, for the reasons stated in the case of *The Hoppet.*

Sentence reversed, and the cause remanded, with leave to amend the libel.