

The Mars.

bound it. A bale of goods which is once contaminated with a forfeiture, will retain its noxious quality through every successive transfer, even until it has assumed under the hands of the artizan its ultimate application to domestic use: yet such a position would strike us all as monstrous. If we say, that the forfeiture shall cease with the change of the identity of the whole package, as such, still an intrinsic difficulty remains. The object of the government would be completely evaded by the offender, and the innocent purchaser would sink under the pressure of frauds which he could never know, nor by diligence avert.

"On the whole, I have come to the result, not however without much diffidence of my own opinion, that a forfeiture attached to a thing, conveys no property to the government in the thing, until seizure made or suit brought. That previous to that time, the owner has the exclusive right of possession and property, though the government may be considered as having an inchoate title, or possibility. That against the offender or his representatives, upon seizure or suit, the title, by operation of law, relates back to the time of the offence, so as to avoid all mesne acts; but as to a *bonâ fide* purchaser, for valuable consideration, and without notice of the offence, the doctrine of relation does not apply so as to divest his legitimate title.

"Considering, as I do, that this question is of very great importance, I trust, that it will receive the decision of the highest tribunal; and I shall not feel humbled, if upon better examination a different doctrine shall prevail by the judgment of that court. I do, therefore, adjudge and decree, that the decree of the district court in the premises be affirmed."

Decree reversed.

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*The MARS. (a)

UNITED STATES *v.* The Brigantine MARS.

Forfeiture.—Bonâ fide purchaser.

A forfeiture under the 3d section of 28th June 1809, ch. 9, will overreach a *bonâ fide* sale to a purchaser, for a valuable consideration, without notice of the offence.
The Mars, 1 Gallis. 191, reversed.

THIS was an appeal from the sentence of the Circuit Court of Massachusetts district, which affirmed the sentence of the district court, restoring the brig to the claimants.

An information was filed against the brig Mars, for a breach of the act of 28th of June 1809 (entitled "an act to amend and continue in force certain parts of the act, entitled an act to interdict the commercial intercourse," &c.), in departing from port without having given bond according to the 3d section of the act, which provides, that "if any ship or vessel shall, contrary to the provisions of this section, depart from any port of the United States, without clearance, or without having given bond in the manner above mentioned, such ship or vessel, together with her cargo, shall be wholly forfeited."

The vessel, after her return to the United States, and before seizure, was

(a) March 15th, 1814.

The Frances.

bond fide purchased by the claimants, for a full and valuable consideration, without notice of the offence. Upon this ground, she was, by the decree of the district court, ordered to be restored; which decree was affirmed by the circuit court. Judge STORY's opinion in pronouncing that decree, will be found in the preceding case of the *United States v. 1960 Bags of Coffee*. This case having been submitted upon the arguments which were had in that case—

JOHNSON, J., delivered the opinion of the court, as follows:—This case depends upon the principle established in the case against the coffee, the Bohleus, claimants. (a) *The decision, as in that case, was founded [418 upon the ground of a sale to a *bond fide* purchaser, without notice. The decree of the circuit court of Massachusetts district, in this case, is, therefore, reversed, and the brigantine Mars adjudged forfeited to the United States.

Decree reversed.

The FRANCES, BOYER, Master: IRVIN's claim.

Capture as prize.—Discharge of lien.

No lien upon enemy's property, by way of pledge for the payment of purchase-money, or otherwise, is sufficient to defeat the rights of the captors, in a prize court, unless in very peculiar cases, where the lien is imposed by a general law of the mercantile world, independent of any contract between the parties.¹

Where goods are sent upon the account and risk of the shipper, the delivery to the master is a delivery to him, as agent of the shipper, not of the consignee; and it is competent to the consignor, at any time before actual delivery to the consignee, to countermand it, and thus to prevent the consignee's lien from attaching.

THIS was an appeal from the sentence of the Circuit Court of Rhode Island, condemning certain British goods, captured on board the Frances. These goods were claimed by Thomas Irvin, a domiciled merchant of the United States, on the ground of lien.

Irving, for appellants: *Pinkney*, for captors.

Tuesday, March 15th, 1814. (Absent, Marshall, Ch. J.) WASHINGTON, J., delivered the opinion of the court, as follows:—Thomas Irving is a merchant of New York, and claims certain packages of merchandise consigned to him by Robertson & Hastie, and also three boxes of merchandise consigned to him by Pott & McMillan. The consignors were British subjects, residing in Great Britain, at the time that these goods were shipped, which, according to the terms of the bills of lading, were on account and risk of the shippers.

It is not pretended, that the real ownership in these goods was not vested in the consignors, enemies of the United States; but the claimant founds his pretensions on a lien created on the goods consigned by Robertson & Hastie, in consequence of an advance made to the shippers, in consideration of the consignment, by his *agent in Glasgow; and on the goods shipped by Pott & McMillan, in virtue of a general balance of [*419

(a) The case of the *United States v. 1960 Bags of Coffee*, *ante*, p. 398.

¹ The *Battle*, 6 Wall. 498; The *Hampton*, 5 Id. 372.