

The RICHMOND. (a)

The Ship RICHMOND v. UNITED STATES.

Seizure for breach of municipal law.

The non-intercourse act of 28th of June 1809, which requires a vessel bound to a permitted port to give bond in double the amount of vessel and cargo not to go to a prohibited port, is applicable to a vessel sailing in ballast.

If a merchant vessel of the United States be seized by the naval force of the United States, within the territorial jurisdiction of a foreign friendly power, for a violation of the laws of the United States, it is an offence against that power, which must be adjusted between the two governments; this court can take no cognisance of it.

The law does not connect that trespass with the subsequent seizure by the civil authority, under the process of the district court, so as to annul the proceedings of that court against the vessel.¹

APPEAL from the sentence of the Circuit Court for the district of Georgia, affirming the sentence of the district court, which condemned the ship Richmond, for a violation of the non-intercourse act of 28th of June 1809 (2 U. S. Stat. 550), by departing from Philadelphia, bound on a foreign voyage to a permitted port, without having given bond not to go to a prohibited port.

The case was argued by *Harper*, for the appellant, and *Jones* and *Pinkney*, for the United States.

February 22d, 1815. (Absent, Todd, J.) MARSHALL, Ch. J., delivered the opinion of the court as follows:—The ship Richmond, an American registered vessel, sailed from Philadelphia, in ballast, in December 1809, with a clearance for New York, but proceeded to Portsmouth, in Great Britain, where she arrived in 1810. She made two voyages to Amelia Island, in East Florida, during the second of which, she was seized, in St. Mary's river, by gun-boat No. 62, January 14th, 1812, and libelled in the district court of Georgia, for violating the act passed the 28th of June 1809, for amending [103] the non-intercourse law. The Richmond was condemned in both the district and circuit courts, and from their sentence, the claimants have appealed to this court.

The claimants contend, 1. That the vessel was not liable to forfeiture. 2. That the seizure was made within the territory of Spain, and that all proceedings founded thereon are void.

When the Richmond sailed from Philadelphia, commercial intercourse between the ports of Great Britain, and those of the United States, was permitted. But the act of the 28th of June 1809 (2 U. S. Stat. 550), enacts, that “no ship or vessel bound to a foreign port or place with which commercial intercourse has been or may be thus permitted, except, &c., shall be allowed to depart, unless the owner or owners, consignee or factor of such ship or vessel shall, with the master, have given bond, with one or more sureties, to the United States, in a sum double the value of the vessel and cargo, that the vessel shall not proceed to any port or place with which commercial intercourse is not thus permitted, nor be directly nor indirectly engaged, during the voyage, in any trade with such port or place.” If a

(a) February 15th, 1815. Absent, TODD, Justice.

¹ The Merino, 9 Wheat. 391; s. p. Dow's Case, 18 Penn. St. 37.

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vessel shall depart, without having given such bond, the vessel, with her cargo, are declared to be wholly forfeited.

It is contended, that this act does not apply to vessels departing from the United States to a permitted port, in ballast. The act is certainly not expressed with all the precision that could be wished. The case contemplated by the legislature most probably was that of a vessel sailing with a cargo; but there is reason to believe, that a vessel departing in ballast also was within the meaning and intent of the law. The bond is provided to prevent a breach of the existing restrictive laws, by a vessel clearing out or sailing for a permitted port, but actually proceeding to a prohibited port. This might be done by a vessel with or without a cargo; and the condition of the bond would be violated, in its letter as well as spirit, by *the vessel's sailing, without the cargo, to a prohibited port. The court [*104 understands the law, then, directing a bond to be given in double the value of the vessel and cargo, to apply to the cargo, if there be a cargo, but to the vessel only, if there be no cargo.

The seizure of an American vessel, within the territorial jurisdiction of a foreign power, is certainly an offence against that power, which must be adjusted between the two governments. This court can take no cognisance of it; and the majority of the court is of opinion, that the law does not connect that trespass, if it be one, with the subsequent seizure by the civil authority, under the process of the district court, so as to annul the proceedings of that court against the vessel. One judge, who does not concur in this opinion, considers the testimony as sufficient to prove that the Richmond, when first seized by the gun-boat, was within the jurisdictional limits of the United States. The sentence is affirmed, with costs.

Sentence affirmed.

ARNOLD and others *v.* UNITED STATES. (a)*Duties on imports.—Bond.—Computation of time.*

The double duties imposed by the act of July 1st, 1812, accrued upon goods which arrived within a collection district on that day.

To constitute an importation, so as to attach the right to duties, it is necessary, not only that there should be an arrival within the limits of the United States and of a collection district, but also within the limits of some port of entry.¹

Semble: That if the condition of a bond be to pay \$1700, or the duties which may be ascertained to be due upon certain goods imported, it is not in the option of the obligor, to discharge the bond, by payment of the \$1700.

That an obligee may, at law, recover more than the penalty of the bond.²

Where the computation is to be made from an act done, the day, on which the act is done, is to be included.³

United States *v.* Arnold, 1 Gallis. 348, affirmed.

ERROR to the Circuit Court for the district of Rhode Island, in an action of debt, upon a bond in the penalty of \$3400, given July 2d, 1812, for duties

(a) February 23d, 1815.

¹ See *Meredith v. United States*, 13 Pet. 494. ³ *Lapeyre v. United States*, 17 Wall. 198.

² See *Lawrence v. United States*, 2 McLean 581, 585-8, where the authorities on this point are considered. See *Dutcher v. Wright*, 98 U. S. 560; *Burgess v. Talman*, 97 Id. 384.