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until a proper deed be made. But the objections to the deed cannot be examined in this action.

Judgment reversed. (a)

*JUDGMENT.—This cause came on to be heard on the transcript of the record of the circuit court of the United States, for the county of Washington, and was argued by counsel. All which being seen and considered, it is the opinion of this court, that there is error in the proceedings of the said circuit court, in this, that the said court refused to instruct the jury, on the application of the counsel for the plaintiff, that on the facts given in evidence to them, if believed, the plaintiff was entitled to recover in that action; wherefore, it is considered by this court, that the said judgment of the said circuit court be reversed and annulled, and that the cause be remanded to the said court, to be proceeded in according to law. [*18]

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Embargo.

In seizures under the embargo laws, the law itself is a sufficient justification to the seizing officer, where the discharge of duty is the real motive, and not the pretext, for detention; and it is not necessary to show probable cause.

But the embargo act of the 25th of April 1808, related only to vessels ostensibly bound to some port in the United States, and a seizure, after the termination of the voyage, is unjustifiable; and no further detention of the cargo is lawful, than what is necessarily dependent on the detention of the vessel.

It is not indispensable to the termination of a voyage, that the vessel should arrive at the *terminus* of her original destination; but it may be produced by stranding, stress of weather, or any other cause inducing her to enter another port, with a view to terminate her voyage *bonâ fide*. [*19]

But if a vessel, not actually arriving at her port of original destination, excites an honest suspicion in the mind of the collector, that her demand of a permit to land the cargo, was merely colorable, this is not a termination of the voyage, so as to preclude the right of detention.

ERROR to the Supreme Judicial Court of the state of Massachusetts. This was an action of trover, brought in the state court, in which Walter, the plaintiff in that court, recovered of Otis, the defendant in that court, damages for the conversion of sundry articles constituting the cargo of a vessel called the Ten Sisters.

The defendant in the court below, collector of the port of Barnstable, in Massachusetts, had detained the vessel, under suspicion of an intention to violate the embargo laws, particularly the act of the 25th of April 1808, §§ 6 and 11. The vessel sailed from Ipswich, with a cargo of flour, tar and

(a) By the French law, the price of the sale of real property cannot be recovered by the vendor, if the vendee, has been disturbed (*troublé*) in his possession, by prior incumbrances, or has just ground for apprehension on that account, until the litigation concerning them is terminated; unless, indeed, the vendor gives sufficient security to indemnify the vendee in case of eviction. Pothier, *de Vente*, n. 280. Code Napoleon, liv. 3, tit. 6, ch. 5, n. 1653. For the various distinctions in our law as to when the vendee may detain the purchase-money, if incumbrances are discovered, previously to the payment of it, and to what relief he is entitled, if evicted after the money is actually paid, see Sugden's Law of Vendors, as above cited, which contains a complete digest of the cases in equity on this subject.

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rice, in order to carry the same to Barnstable, or to a place called Bass River, in Yarmouth; and proceeded to Hyannis, in the collection district of Barnstable. On her arrival there, the master applied to the collector for a permit to land the cargo, which was refused by the latter, who shortly afterwards seized and detained the vessel, under the above-mentioned acts. This detention was given in evidence, as a defence to the action, under the general issue, and the Chief Justice of the supreme court of Massachusetts instructed the jury, "that the said several matters and things, so allowed *20] and proved, *were not sufficient to bar the plaintiff of his said action, nor did they constitute or amount to any defence whatever in the action," &c. Whereupon, the jury found a verdict, and the court rendered a judgment, for the plaintiff.

The *Attorney-General*, for the plaintiff in error, argued, that this case fell under the principle of that of *Crowell v. McFaddon*, 3 Cr. 94, and it would appear that the vessel was *in itinere*; but that even if this were not the state of the case, the jury ought to have been left to make their own inference from the facts, and not to have been charged by the judge, that no defence whatever was made out.

Read, for the defendant in error, contended, that the case of *Otis v. Bacon*, 8 Cr. 589, was perfectly in point, and showed that the vessel, having arrived at her port of discharge, was no longer within the operation of the embargo laws; and that if the collector's defence was not completely made out—if it was, in any respect, materially defective—it was not made out at all.

February 21st, 1817. JOHNSON, Justice, delivered the opinion of the court.—This was an action of trover, brought in the state court of Massachusetts, in which Walter, the plaintiff in that court, recovered of Otis, damages for the conversion of sundry articles, constituting the cargo of a *21] vessel called the *Ten Sisters*. *Otis, the collector of Barnstable, had detained the vessel, under suspicion of an intention to violate the embargo laws. (Act of the 25th of April 1808, §§ 6 and 11.)

It has already been decided, in such cases, that it is not necessary to show probable cause; that the law confides in the discretion of the collector, and is, in itself, a sufficient justification, when the discharge of duty is the real motive, and not the pretext, for detention. But it has also been decided, that the law relates only to vessels, ostensibly bound to some port in the United States; that a seizure is unjustifiable, after the termination of a voyage; and that no further detention of the cargo is lawful, than what is necessarily dependent upon the detention of the vessel.

In this case, there was no ground for charging the collector with oppression or malversation; and the only point insisted on in the argument was, that she had actually terminated her voyage. As the clearance is not in evidence in the cause, we are obliged to take the *termini* of the voyage from the testimony of the master, who swears that he sailed from Ipswich, "with a cargo of tar, flour and rice, to carry the same to Barnstable, in the county of Barnstable, or to a place called Bass River, in Yarmouth, in said county;" that he "proceeded to Hyannis, in the district of Barnstable: that on his arrival there, he applied for a permit to land, which was refused by the col-

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lector, who, in a day or two afterwards, seized the vessel, and detained her, under the embargo acts." Ipswich lies to the north of the peninsula *which terminates in Cape Cod ; the port or bay of Barnstable, on the north side of that peninsula ; Bass River and Hyannis Bay, on the south ; all of them known as distinct places, but all lying within the county and collection district of Barnstable. And although Hyannis Bay lies within the district of Barnstable ; yet to reach it, in sailing from Ipswich, you must pass both the town of Barnstable and the mouth of Bass River. [*22]

The defence of the collector in the state court was founded on the authority to detain, vested in him by the act of congress. The instruction of the Chief Justice of that state was in these words : "that the said several matters and things, so allowed and proved, were not sufficient to bar the plaintiff of his said action, nor did they constitute or amount to any defence whatever in the action."

Instructions couched in such general terms may serve to embarrass a court exercising appellate jurisdiction ; but it is a mistake, to suppose, that it precludes such a court from a view of the errors which may have been committed on the trial. It has before been decided, that it only obliges this court to look through the whole cause, and examine if there be nothing in it which ought to have called forth a different instruction or judgment. In this case, we are of opinion, that, conformable to our former decisions, the instruction given could only have been sanctioned, on the supposition that the vessel had actually terminated her voyage. But here, it is contended, that this court stand committed by an admission *in the case of *Otis v. Bacon*, 7 Cr. 589, that a destination to Barnstable is satisfied by an arrival in Hyannis Bay. [*23]

We have looked into the record in that case, and find that it will support no such inference. It is true, that Mud-hole, the place at which the vessel had arrived in that case, is in Hyannis Bay. But the question of fact did not arise, for the collector had acquiesced in the termination of the voyage there, by actually granting a permit to land. And the grant of the permit was expressly made a ground, in the state court, of the instruction to the jury. Now, it is not indispensable to the termination of the voyage, that the vessel should arrive at the *terminus ad quem* she was destined. It may as well be produced by stranding, by stress of weather, or by any other cause, inducing her to enter another port, honestly, with a view to terminate her voyage. But if a vessel, not actually arriving at her port of destination, excite an honest suspicion in the mind of the collector, that her demand of a permit was merely colorable, we are of opinion, that this can neither be held to be an actual, or admitted termination of the voyage, so as to preclude the right of detention. Had the destination in this case been generally to Barnstable, or the town of Barnstable, there may have been some color of ground for arguing, that her arrival at Hyannis was the termination of her voyage ; but as the destination was expressly to Barnstable or Bass River, within the county of *Barnstable, her arrival at one or the other of those places was indispensable to the termination of her voyage, supposing her really, in fact, to have had no ulterior destination. [*24]

But a destination may be colorable, and intended only to mask an ulterior and illegal destination ; and hence, we are of opinion, that, unless the fact be conceded, by some such unequivocal act, as was done by the collector in

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the case of *Otis v. Bacon*, it is a question which ought to be left, in the instruction of the court, open to the jury. And that if any positive instruction on the subject had been given to the jury in this cause, it ought to have been in favor of the defendant, as the arrival in Hyannis Bay would not have been deemed a legal termination of the voyage, either on a policy of insurance, a charter-party, bottomry-bond, or any other maritime contract.

A majority of the court are, therefore, of opinion, that the court of Massachusetts erred in this case, and that the judgment ought to be reversed.

Judgment reversed.

Mr. Justice STORY did not sit in this cause.

*25] *McIVER *et al.*, Lessees, *v.* RAGAN *et al.*

Limitation.

The plaintiffs in ejectment claimed under a grant from the state of North Carolina, comprehending the lands for which the suit was brought, and the defendants claimed under a junior patent, and a possession of seven years, which, by the statutes of that state and Tennessee, constitutes a bar to the action, if the possession be under color of title: to repel this defence, the plaintiffs proved, that no corner or course of the grant, under which they claimed, was marked, except the beginning corner; that the beginning, and nearly the whole land, and all the corners, except one, were within the Cherokee Indian boundary, not having been ceded to the United States, until the year 1806, within seven years from which time the suit was brought; but the land in the defendant's possession, and for which the suit was brought, did not lie within the Indian boundary: *Held*, that, notwithstanding the laws of the United States prohibited all persons from surveying or marking any lands within the Indian territory, and the plaintiffs could not, therefore, survey the land granted to them, the defendants were entitled to hold the part possessed by them for the period of seven years under color of title.

McIver v. Reagan, Cooke 366, affirmed.

ERROR to the Circuit Court for the district of West Tennessee. The plaintiffs in error brought an ejectment in that court for 5000 acres of land, in possession of the defendant, Ragan, and on the trial, gave in evidence a grant from the state of North Carolina of 40,000 acres, comprehending the lands for which the suit was instituted.

The defendants claimed under a junior patent to Mabane, and a possession of seven years held by Ragan, which, by the statutes of North Carolina and *Tennessee, constitutes a bar to the action, if the possession

*26] be under color of title.

To repel this defence, the plaintiffs proved, that no corner or course of the grant, under which they claimed, was marked, except the beginning corner. That the beginning, and nearly the whole land, and all the corners, except one, were within the Indian boundary, being part of the lands reserved by treaty for the Cherokee Indians. These lands were not ceded to the United States, until the year 1806, within seven years from which time, this suit was instituted. But the land, in possession of the defendant, Ragan, and for which this ejectment was brought, did not lie within the Indian boundary.

The laws of the United States prohibited all persons from surveying or marking any lands within the country reserved by treaty for the Indians.

Upon this testimony, the counsel for the plaintiffs requested the court to instruct the jury, that "the act of limitations would not run against the