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just as liable to confiscation, for illegal traffic with that place, as she was at the time the voyage was broken up.

It is the unanimous opinion of the court, that the judgment of the circuit court be affirmed, with costs.

Judgment affirmed.

THE ROBERT EDWARDS : SAVAGE, Claimant.

Duties on imports.

A question of fact under the 46th section of the collection law of the 2d March, 1799, c. 128, exempting from duty the wearing-apparel, and other personal baggage, of persons arriving in the United States.

Where the *res gestæ*, in a revenue cause, are incapable of explanation, consistently with the innocence of the party, condemnation follows, although there be no positive testimony of the offence having been committed : circumstances are sometimes more convincing than the most positive evidence.

*Although a mere intention to evade the payment of duties be not, *per se*, a cause of forfeiture, yet, when a question arises, whether an act has been committed, which draws [*188 after it that consequence, such intention will justify the court in not putting on the conduct of the party, in respect to the act in question, an interpretation as favorable as, under other circumstances, it would be disposed to do.

APPEAL from the Circuit Court of South Carolina.

February 17th, 1821. This cause was argued by *Winder* and *Raymond*, for the appellant and claimant, and by the *Attorney-General*, for the United States.

February 26th. LIVINGSTON, Justice, delivered the opinion of the court. —This is a libel for an alleged forfeiture under the 46th section of the collection law, passed the second of March 1799. This section exempts from duty the wearing-apparel, and other personal baggage, of those persons who arrive in the United States ; and to ascertain what articles are to be exempted, it is directed, that due entry thereof, as of other goods, but separate and distinct therefrom, shall be made with the collector, by the owner, or his agent, verified by oath, stating, among other things, that the packages mentioned in such entry, contain no goods whatever, except the wearing-apparel and other personal baggage of the person to whom they belong. And it is provided, that whenever any articles subject to duty, shall be found among such baggage, which shall not be mentioned to the collector, at the time such entry is made, they shall be forfeited, and the person in *whose baggage they shall be found, shall, moreover, forfeit [*189 and pay treble the value of such articles.

These proceedings commenced in the district court of the district of South Carolina, and after sentences of condemnation in that court, and in the circuit court of the United States for that district, the claimant has appealed to this court. The only question we have to decide, is, whether the goods libelled, and which are admitted to be subject to duty, were entered as baggage or not. If they were, they must be condemned ; if not, the claimant is entitled to restitution.

The claimant insists, that the trunks seized were not included in her baggage entry, and that no act of hers, prior or subsequent to the entry, shows

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that it was her intention to cover them by it. Her baggage entry comprised "seven trunks wearing-apparel, sundry band-boxes and bedding, for Mrs. Savage and family, passengers in the ship Robert Edwards." Under this entry, and a permit given in conformity with it, the claimant took away several trunks and band-boxes, the contents of some of which do not appear, but she alleges that they contained only baggage, and no dutiable article, and that she never demanded the trunks in question, as part of those mentioned in the entry of her baggage. Some reliance is also placed on the fact, that before any seizure, these trunks were regularly entered by the master, and the duties on them secured or paid. Whether they were thus entered or not, can have no influence on the present question, which is confined to the single inquiry, whether they had, previous *to such act on

*190] the part of the master, been entered by the owner, as part of her baggage. For no act of the master, subsequent to such entry, could relieve them from the forfeiture which in that case had previously attached.

It will be sufficient to advert to a few of the prominent facts, to ascertain the real character of this transaction. The court has been reminded, that it ought not, without the most satisfactory and positive proof, in a case so highly penal, to decide that a violation of law has been committed. Although such proof may generally be desirable, we are not to shut our eyes on circumstances, which sometimes carry with them a conviction, which the most positive testimony will sometimes fail to produce. And if such circumstances cannot well consist with the innocence of the party, and arise out of her own conduct, and remain unexplained, she cannot complain, if she be the victim of them. No extraordinary prudence or circumspection on the part of the claimant, was necessary, to have avoided the unpleasant predicament in which she is placed. If she had brought these goods on board, in London, as cargo; if she had paid freight for them as such; if she had desired them to be placed on the manifest of the cargo, which she was most probably apprised was necessary; if, when she entered her other merchandise, imported in the same vessel, she had also entered these; if, after making her baggage-entry, she had distinguished or informed the inspector which of the trunks contained her baggage, and which were filled with

*191] merchandise, the whole *of the present difficulty would have been avoided. The claimant neglecting to take any one of these precautions, which could not have been the effect of ignorance, as it appears she is occasionally engaged in the importation of goods in the line of her business, leads, irresistibly, to the conclusion, that she intended to land these trunks, without the payment of duties, and that this end was to be effected, under the disguise of entering them as baggage and wearing-apparel. Although a mere intention to evade such payment, be no cause of forfeiture, yet when a question arises, whether an act has been committed, which draws after it this consequence, such intention will assist in dispelling some of the doubts in which the act itself might otherwise be involved, and will justify a court in not putting on the conduct of the party, in relation to the act in question, an interpretation as favorable as, under other circumstances, it would feel disposed to do. Thus, in the case before us, the claimant wishes us to believe, that the seven trunks of wearing-apparel, and the band-boxes which were included in her baggage-entry, were all of them actually landed under her permit; and that, therefore, the five trunks which remained on

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board, and were seized as composing part of her baggage-entry, were not comprised in it. But is this made out with any reasonable certainty? On the contrary, is there any evidence whatever, on which we can come to a satisfactory conclusion, that seven trunks, which was the number entered by her as baggage, were actually landed before the seizure. What the [*192 *claimant herself considered as band-boxes, and actually represented [as such to the inspector, she now desires may be converted into trunks. Unless this can be done, which would be to disbelieve the whole evidence in the cause, there is no pretence for saying, that all the trunks entered by her as baggage, had been landed. The marks on the trunks do not furnish even a presumption in her favor, for on those landed, and on those seized, we find the same inscription, that is, "Mrs. Savage's baggage, apparel and haberdashery." In this uncertainty and confusion, which is the result of her own irregular conduct, and which it was her business, and not that of the court, to remove, she has exposed her case to very unfavorable inferences. One of the trunks landed was empty, or contained only a few books and loose papers; and yet it appears, by a cocket produced before the circuit court, that this very trunk, when taken board, was valued in London at 115*l.* sterling. What became of the goods which it then contained, is left without explanation. This forms a part of the *res gestæ*, and is a circumstance, if not of strong suspicion, at any rate, but little calculated to evince the integrity of the transaction.

Without, therefore, entering into a more minute detail of the circumstances of this case, the court is well satisfied, from the whole of the evidence, notwithstanding some little obscurity in which it is involved, that the trunks in question formed a part of the baggage entry of the claimant, and therefore, affirm the sentence of the circuit court, with costs.

Sentence affirmed.

*The NUEVA ANNA and The LIEBRE: The SPANISH CONSUL, [*193 Claimant.

Prize.—Insurgent states.

This court does not recognise the existence of any lawful court of prize at Galveston, nor of any Mexican republic or state, with power to authorize captures in war.

APPEAL from the District Court of Louisiana. These were the cases of the cargoes of two Spanish ships, captured and condemned by a pretended court of admiralty at Galveston, constituted by Commodore Aury, under the alleged authority of the Mexican republic. The goods were, after this condemnation, brought into the port of New Orleans, and there libelled by the original Spanish owners, in the district court. That court, decreed restitution to the original owners, and the captors appealed to this court.

February 26th, 1821. This cause was argued by *Hopkinson*, for the respondents and libellants; no counsel appearing for the appellant and captors.

THE COURT stated, that it did not recognise the existence of any court of admiralty, sitting at Galveston, with authority to adjudicate on captures,