fectly good legal title. That possession ought not to be ousted, without a clear title in the other party, especially, where it has been upheld by the state tribunals. This very case, between the same parties, has been already adjudicated in the court of appeals of Kentucky; and that court, upon full deliberation, decided *in favor of the defendant. *Preston's Heirs* v. [*583
Bowmar, 2 Bibb 493. It would be a great mischief, for the same title to be in perpetual litigation from the conflict of opinion between the courts of the state and the federal courts; and we, therefore, acquiesce in the opinion of the court of appeals, upon the ground, that the point is one of local law, has been fully considered in that court, and is a construction which cannot be pronounced unreasonable, or founded in clear mistake.

Judgment affirmed.

Otis *v.* Walter.

Embargo.

Under the embargo act of the 25th April 1808, c. 170, if a vessel, not actually arriving at her port of original destination, excite 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.

Under what circumstances, the collector has a right to land the cargo of the vessel thus detained.

Error to the Supreme Judicial Court of Massachusetts.

March 12th, 1821. This cause was argued by the *Attorney-General*, for the plaintiff in error, and by *Webster* and *Wheaton*, for the defendant in error, citing *Otis* v. *Bacon*, 7 Cranch 596; *Crowell* v. *McFadden*, 8 Ibid. 98; *Slocum* v. *Mayberry*, 2 Wheat. 11.

*March 16th. Livingston, Justice, delivered the opinion of the [*584
court.—This is an action of trover, brought by the defendant in error, against the plaintiff and others, in the court of common pleas, held at Boston, within and for the county of Suffolk, to recover the value of eighty-six barrels of flour, and sundry other articles, in which judgment was recovered against the plaintiff in error, from which judgment there was an appeal to the supreme judicial court, which is the highest court of law in the commonwealth of Massachusetts, in which judgment was rendered against the plaintiffs in error, for the sum of $2488.75, and costs of suit, and in favor of the other defendants. On the judgment, the defendant below, William Otis, has prosecuted a writ of error to this court, under the 25th section of the judiciary act of the United States; and we are now to decide, whether there was any error in the direction given by the judge before whom this action was tried, and which appears on the bill of exceptions attached to the record in this cause.

The property in question had been seized by William Otis, as deputy-collector of the customs for the port and district of Barnstable, in the commonwealth of Massachusetts, under the 11th section of an act in addition to the act, entitled, "an act laying an embargo on all ships and vessels in the ports and harbors of the United States," and the several acts supplementary

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thereto, and for other purposes, passed the 25th April 1808. On the bill of exceptions, the following facts appear :

*585] On the part of the *plaintiff, Lynde Walter, it was proved, that the goods mentioned in the declaration were his property ; that they were put on board of the sloop Ten Sisters, at Ipswich, in Massachusetts, bound for the port of Yarmouth ; that it was agreed or understood between Walter and Hallett, who was master of the sloop, that the latter was to carry said goods to Barnstable, or to a place called Bass river, in Yarmouth, with orders to sell the same, provided he could obtain a certain price fixed by Walter, otherwise to deliver them to Freeman Baker, of Yarmouth ; that said sloop, on the 19th November 1808, cleared out at Ipswich, to proceed to the port of Yarmouth, as expressed in the clearance obtained from the collector at that place ; that said sloop proceeded ronnd Cape Cod to Hyannis, in the town and district of Barnstable, and the master applied to William Otis, a deputy-collector for that port and district, for a permit to land the cargo, which he refused to give, but ordered him not to discharge anything from the sloop, until he should have a permit so to do. That in a day or two afterwards, Otis came on board the sloop with four men, and seized sloop and cargo, and putting a pilot and crew on board, he sent her to Falmouth, in the district of Barnstable, where Otis had the cargo discharged and stored, in and under a dwelling-house in Falmouth : the master forbidding Otis to meddle with the sloop or cargo. The master also exhibited to Otis his manifest, and swore to the correctness of the same.

*586] On the part of Otis, it was proved, that he was deputy-collector for Barnstable ; that on the 29th November *1808, he duly reported to the president of the United States, the detention of this sloop and her cargo, under and by virtue of the act above mentioned, which detention was confirmed and approved by the president, on the 8th of December 1808. That the sloop, when seized, lay at anchor, about half a mile from the shore or beach, which is in the town and port of Barnstable, near the centre thereof, six miles distant from Bass river, on which Freeman Baker's house and store are situated, and about five miles from the harbor of Yarmouth. That Freeman Baker's landing is situate above a quarter of a mile from the mouth of Bass river, on said river, in the town of Yarmouth, about six miles and an half by water, from where the sloop was seized, and lies to the eastward of Point Gammon. Hyannis, where the vessel was seized, is westward of Point Gammon, and in the town of Barnstable. That the sloop, when seized, had not arrived at the harbor of Yarmouth, but was lying in the port or harbor of Barnstable, about three miles from the harbor of Yarmouth, which lies east-north-east from the port of Barnstable, and the sloop, on her way from Ipswich to the place where she was seized, passed the place for which she was cleared, because the weather would not permit the master to get her either into the harbors of Bass river, or Gage's wharf, and because he lived near Hyannis, and wished to see his family, and to lay his vessel in a safe place, and to land certain articles of bedding, &c., from the vessel, as it was his intention to strip the vessel, when she arrived at

*587] Yarmouth. After the master arrived in *Hyannis Bay, it was his intention to land his cargo at Gage's wharf, which is in the town of Yarmouth ; about three rods distant from the line of Barnstable, and about six miles and an half from the place where the sloop was anchored, when

seized. Between Yarmouth harbor, or Bass river harbor, and Hyannis, or Barnstable harbor, where the vessel was seized, is a long point of land, called Point Gammon, extending several miles into the sea, and the distance by the nearest course of the ship-channel, or deep water, from Bass river to Hyannis, is ten miles, and in going from Ipswich to Hyannis, the sloop passed Bass river harbor, or Yarmouth harbor and Point Gammon. The cargo, when stored by the collector, was, some of it, in bad and perishable condition, and was put in better order, by coopering, &c., before being stored.

On this evidence, the jury were charged, that under the clearance, the master had a right to go to any part of Yarmouth with his vessel, notwithstanding it might have been the intention of him and the owner, that she should go to Bass river in that town: that if she had been carried beyond Bass river, by force of the winds, and contrary to the master's intention, and came to anchor in Hyannis bay, within the limits of the town of Barnstable, for that cause, still, if the jury believed that, in consequence of this state of things, the master had concluded to give up his intention of going to Bass river, and in lieu thereof, to carry his vessel to Gage's wharf, which is within the town of Yarmouth, on the same side of Point Gammon as Barnstable, and to all substantial *purposes, the same harbor; and for this pur- [*588
pose, was waiting only for a proper opportunity to take the vessel into that wharf, they might justly and fairly determine that the voyage was terminated, at the time Otis took possession of the vessel.

Whether this part of the charge were correct, will depend on the true construction of the 11th section of the act of congress, under which this seizure was made, and which has already been referred to. Its language is, "that the collectors of the customs be and they are hereby respectively authorized to detain any vessel, ostensibly bound with a cargo to some other port of the United States, whenever, in their opinion, the intention is to violate or evade any of the provisions of the acts laying an embargo, until the decision of the president of the United States be had thereupon."

Of the ostensible destination of the Ten Sisters, at the time of her leaving Ipswich, there can be no doubt. This, from the manifest and clearance was Yarmouth or Bass river. What better evidence, then, could Otis have of this fact, than that which he acquired from an inspection of these papers. If, then, such was her ostensible destination, at the time of her sailing from Ipswich, and she had not arrived at Yarmouth or Bass river, at the time of seizure, it would seem, that he would have a right, under the provisions of this section, to detain the Ten Sisters, if, in his opinion, an intention existed of violating the embargo laws. It is not pretended, that this was not his real opinion, or that, for an honest exercise of such an opinion, he ought to be punished. There *is a confidence placed in the discretion of a [*589
collector, in cases of this kind, which may be abused, but which ought to protect him from loss, when there is no reason to believe, as there is not, in this case, that the detention proceeded from sinister motives, and not from a conscientious desire of discharging his duty. To subject a collector, or any public officer, to such an imputation, when acting under a discretion thus reposed in him, the circumstances ought to be such as almost to preclude the possibility of his having acted, but from some unworthy or dishonorable motive. The court is much mistaken, if the facts in this case are

such as to lead to this conclusion. The only question, then, is, whether the circumstances were such, at the time of seizure, as to confer on the collector, or his deputy, the right of acting under the influence of an opinion, that such illegal intention existed.

But it is supposed, that the Ten Sisters had substantially terminated her voyage, or that, being driven beyond Point Gammon into Hyannis bay, she might lawfully terminate her voyage, and land her cargo at Barnstable. If a permit had been obtained to land her cargo at Barnstable, this argument would be entitled to much consideration; but when the master of a vessel, bound by her papers to one port, applies for a permit to land her cargo at another place, he cannot, in that way, deprive the collector of considering the vessel as still *in itinere* to her original port of destination, and if he suspects such application to be a mere pretence to conceal some illicit object, he has as good a right to make the seizure, as if a permit had not been
*590] *applied for. In the case of *Otis* v. *Bacon*, 7 Cranch 596, a permit to land the cargo had been granted, before any seizure took place, which was considered by the court as evidence of the termination of the voyage, and that she could not, thereafter, be considered as actually or ostensibly bound to any other port. Nor can the exhibition of the manifest, or swearing to its contents, be considered as equivalent to a permit to land the goods. It might, on the contrary, furnish evidence, as it did here, of an ostensible destination from one port of the United States to another, where she had not yet arrived, and in which case, the collector had authority to act; nor was he bound to believe, merely from that circumstance, or from the then situation of the vessel, that such destination was abandoned. On a former trial of this cause,[1] no clearance was produced, and the only testimony on this subject came out, on the examination of the master, who declared, that the vessel was bound to Yarmouth or Barnstable.

Upon the whole, this court is of opinion, that the learned judge who tried the cause committed an error, in telling the jury that they might fairly and justly determine the voyage was terminated, at the time of seizure, if they believed the master had given up his intention of going to Bass river, and had determined to land his cargo at Gage's wharf, which, though within the boundary of Yarmouth, is, in fact, in the harbor of Barnstable, and that he was waiting only for a proper opportunity to take the vessel into that wharf. Now, this was placing the termination of the voyage, not on the fact of its
*591] having *actually ended, but on an intention of the master, of which it was impossible the collector could know anything with certainty, who was to judge of his right and duty to make the seizure only from the papers of the vessel, and the situation in which she was found, which is admitted to have been short of her destined port. But if a secret intention of the master be permitted to be set up as a ground of decision, and this, too, contrary to the written evidence in the cause, on which alone a public officer can act with safety, he would always be exposed to risks which might deter him from acting altogether. The jury, therefore, should have been left to decide, from the other evidence in the cause, independent of any secret, or even declared, intention in the mind of the master, whether the ostensible voyage was terminated or not; and it seems difficult to conceive,

[1] See 2 Wheat. 18.

how their decision could have been otherwise than favorable to Otis. In this part of the charge, therefore, the court is of opinion, there is error.

Another part of the court's instruction to the jury is also complained of: it is that, in which the chief justice remarks, that the collector had no authority, without the consent of the master, or person having the care of the cargo, to unlade it from the vessel and store it. It is not known what influence this opinion had on the jury; but in the unqualified terms in which the collector's right to unlade the cargo is denied, this court does not concur. We have already decided, that, with the consent of the master, or agent of the owner, the cargo may be landed, but it was not intended to say, that in no other case *could such landing and storing be justifiable. If it appear that the collector, during the detention of the vessel, shall, *bonâ fide*, think it will tend to the security and preservation of the property, to unlade it, and will do it, at his own expense, it is not perceived, why he may not do so, but at the peril of such an act being regarded, *per se*, as a conversion of the property. At any rate, this consequence ought not to follow, unless it shall appear, that the property was lost or injured, in consequence of such landing. That not appearing to have been the case here, it is not necessary to say, what effect such a circumstance could have had in this suit. All that it is intended to say here, is, that a landing for the purposes, and under the circumstances which appear on this record, is not of necessity, or in itself, a conversion. [*592

Judgment reversed, and a *venire facias de novo* awarded.(*a*)

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*Goszler *v.* Corporation of Georgetown. [*593

Power to grade streets.

The power given to the corporation of Georgetown, by the act of Maryland, of November 1797, c. 56, to grade the streets of that city, is a continuing power, and the corporation may, from time to time, alter the grade so made.

The ordinance of May 1799, by which the corporation of Georgetown first exercised the power of grading the streets, is not in the nature of a compact, and may be altered by the corporation.

Error to the Circuit Court for the District of Columbia.

March 15th, 1821. This cause was argued by *Key*, for the appellant, and by *Jones*, for the respondent.

March 16th. Marshall, Ch. J., delivered the opinion of the court.—This is an appeal from a decree of the circuit court of the United States for the county of Washington, in the district of Columbia, on the following case:

In the year 1797, the legislature of Maryland, among certain additional powers given to the corporation of Georgetown, enacted, that they "shall have full power and authority to make such by-laws and ordinances for the graduation and levelling of the streets, lanes and alleys within the jurisdiction of the same town, as they may judge necessary for the benefit thereof." (Act of November 1797, c. 56, § 6, p. 35.) In pursuance of this authority, the corporation *passed an ordinance, in May 1799, for the graduation of certain streets the first section of which appoints commis- [*594

(*a*) For a further decision in this cause, see 11 Wheat. 192.