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[Instance Court. Slave Trade Act.]

The Mary Ann. Plumer, *Claimant.*

A libel of information, under the 9th sec. of the Slave Trade Act of March 2d, 1807, c. 77. alleging that the vessel sailed from the *ports of New-York and Perth Amboy,* without the captain's having delivered the manifests required by law to *the collector or surveyor of New-York and Perth Amboy,* is defective; the act requiring the manifest to be delivered to the collector or surveyor of a *single port.*

Under the same section, the libel must charge the vessel to be of the burthen of 40 tons or more. In general, it is sufficient to charge the offence in the words directing the forfeiture; but if the words are general, embracing a whole class of individual subjects, but must necessarily be so construed as to embrace only a subdivision of that class, the allegation must conform to the legislative sense and meaning.

Where the libel is so informal and defective, that the Court cannot enter up a decree upon it, and the evidence discloses a case of forfeiture, this Court will not amend the libel itself, but will remand the cause to the Court below, with directions to permit it to be amended.

APPEAL from the District Court of Louisiana. This was an allegation of forfeiture, in the Court below, against the brig Mary Ann, for a violation of the act of March 2d, 1807, c. 77. prohibiting the importation of slaves into any port or place within the jurisdiction of the United States, from and after the 1st day of January, 1808. The libel contained two counts. The first alleged, that the brig Mary Ann, on the 10th of March, 1818, sailing coastwise from a port in the United States, to wit, the ports of New-York and Perth Amboy,

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to a port or place within the jurisdiction of the same, to wit, the port of New-Orleans, and having on board certain negroes, mulattoes, or persons of colour, for the purpose of transporting them to be sold or disposed of as slaves, or to be held to service or labour, to wit, No. 1, Lydia, &c. did, laden and destined as aforesaid, depart from the ports of New-York and Perth Amboy, where she then was, without the captain or commander having first made out and subscribed duplicate manifests of every negro, mulatto, and person of colour, on board said brig Mary Ann, and without having previously delivered the same to the collectors or surveyors of the ports of New-York and Perth Amboy, and obtained a permit, in manner as required by the act of Congress, in such case made and provided, contrary to the form of said act. The second count was, for taking on board thirty-six negroes, mulattoes, or persons of colour, previous to her arrival at her said port of destination, contrary to the act, &c.[a]

a The 9th section of the act, on which this proceeding was grounded, provides, "that the captain, master, or commander, of any ship or vessel, of the burthen of forty tons or more, from and after the first day of January, one thousand eight hundred and eight, sailing coastwise, from any port in the United States to any port or place within the jurisdiction of the same, having on board any negro, mulatto, or person of colour, for the purpose of transporting them, to be sold or disposed of as slaves, or to be held to service or labour, shall, previous to the departure of such ship or vessel, make out and subscribe duplicate manifests of every such negro, mulatto, or person of colour, on board such ship or vessel, therein specifying the name and sex of each person, their age and stature, as near as may be, and the class to which they respectively

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The Court below condemned the vessel, as liable to forfeiture, under the act referred to, and the claimant appealed to this Court.

belong, whether negro, mulatto, or person of colour, with the name and place of residence of every owner or shipper of the same, and shall deliver such manifests to the collector of the port, if there be one, otherwise to the surveyor, before whom the captain, master, or commander, together with the owner, or shipper, shall severally swear or affirm, to the best of their knowledge and belief, that *the persons therein specified were not imported or brought into the United States from and after the first day of January, one thousand eight hundred and eight, and that, under the laws of the State, they are held to service or labour;* whereupon the said collector or surveyor shall certify the same on the said manifests, one of which he shall return to the said captain, master, or commander, with a permit, specifying thereon the number, names, and general description of such persons, and authorizing him to proceed to the port of his destination. And if any ship or vessel, being laden and destined as aforesaid, shall depart from the port where she may then be, without the captain, master, or commander, having first made out and subscribed duplicate manifests of every negro, mulatto, and person of colour, on board such ship or vessel as aforesaid, and without having previously delivered the same to the said collector or surveyor, and obtained a permit, in manner as herein required, or shall, previous to her arrival at the port of her destination, take on board any negro, mulatto, or person of colour, other than those specified in the manifests, as aforesaid, every such ship or vessel, together with her tackle, apparel, and furniture, shall be forfeited to the use of the United States, and may be seized, prosecuted, and condemned, in any Court of the United States having jurisdiction thereof; and the captain, master, or commander, of every such ship or vessel, shall, moreover, forfeit, for every such negro, mulatto, or person of colour, so transported, or taken on board, contrary to the provisions of this act, the sum of one thousand dollars, one moiety thereof to the United States, and the other moiety to the use of any person or persons who shall sue for and prosecute the same to effect."

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Feb. 10th.

Mr. *D. B. Ogden,* for the appellant, argued, (1.) That the libel was insufficient in its allegations to sustain the sentence which had been rendered by the Court below. It alleges, that the vessel sailed from the ports of New-York and Perth Amboy, without the captain's having made out the duplicate manifests required by law, and without his having previously delivered the same to the *collectors or surveyors of the ports of New-York and Perth Amboy.* This is too vague and general. The act directs the manifest to be delivered to the collector or surveyor of *a single port.* (2.) The libel alleges, that the manifest required by law, was not made out and delivered before the vessel sailed. But this allegation, as laid, is disproved by the manifest itself, which is in evidence; and if the prosecutor intended to have availed himself of any defects in the manifest, those defects ought to have been specified in the libel. It ought to have charged the not specifying the names, &c., if it was intended to rely on that objection. (3.) The libel does not bring the case within the 9th section of the act, on which it is founded, by stating that the vessel was " of the burthen of forty tons, or more." The clause of forfeiture, in the latter part of that section, although it is in general terms, " any vessel," &c. ought, upon every just principle of interpretation, to be restricted to the vessels of forty tons, or more, which are mentioned in the first part of the section. It is not sufficient to charge the offence in the very words of the statute, but the sense and effect of those words must be looked to, so as to

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give the party notice of the precise offence meant to be charged.[a]

The *Attorney General*, contra, insisted, that this case did not at all resemble that of the *Hoppet*, where the ship, and the innocent goods, were held not to be forfeited, because there was no charge applicable to them, inasmuch as they were not alleged to belong to the owner of the prohibited articles, the French wines. This libel of information does not merely contain a general reference to the law; it gives the party precise notice of the charge, and secures him against any other prosecution for the same offence, which is all that can reasonably be required. In the case of the *Samuel*,[b] there was a more serious objection to the form of the allegation, which, however, did not prevail. Those technical nicieties, which were once insisted on, in criminal informations at common law, are not regarded in admiralty informations, which are modelled upon the more liberal and rational principles of the civil law. A libel may even allege the offence in the alternative of several facts, if each alternative constitute a substantive offence and cause of forfeiture.[c] Here it charges the non-delivery of a manifest, as required by the act, and the proof is, a delivery of a manifest, totally defective in every particular required by the act.

a The Hoppet, 7 *Cranch's Rep.* 389.

b 1 *Wheat. Rep.* 9.

c The Caroline, 7 *Cranch's Rep.* 496. and note of errata to the same volume.

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March 1st.

Mr. Chief Justice MARSHALL delivered the opinion of the Court, and, after stating the case, proceeded as follows:

Several objections have been made to the libel in this case. The first is, that it alleges the brig Mary Ann to have sailed from the ports of New-York and Perth Amboy, without the captain's having first made out and subscribed the duplicate manifests required by law, and without his having previously delivered the same to the collectors or surveyors of the ports of New-York and Perth Amboy, whereas the act of Congress directs the manifest to be delivered to the collector or surveyor of a single port.

This objection is thought fatal. The libel either requires more than the law requires, and charges, as the cause of forfeiture, that the manifest was not delivered to the collectors or surveyors of two ports, while the law directs that it should be delivered to the collector or surveyor only of one; or it is too vague and uncertain, in not alleging, with precision, the port where the offence was committed.

It is probable that the District Attorney might be uncertain whether the brig sailed from the port of Perth Amboy or of New-York; but this circumstance ought to produce no difficulty, since the offence might have been laid singly in each port, and charged expressly, in separate counts.

The second objection is this:

The libel charges, that the manifest required by law, was not made out and delivered before the vessel sailed.

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The counsel contends that a manifest was delivered; that this charge is, therefore, disproved by the fact; and that if the libellant would avail himself of any defects in the manifest, they ought to be specified in the libel.

Whether a libel, charging, generally, that manifests have not been made out and delivered, as required by the act of Congress, would be considered as sufficiently disproved by producing a manifest, not strictly conformable to law, is a question which belongs certainly to the merits of the cause, and which would deserve consideration on the inquiry, how far the defectiveness of the manifest was put in issue by such a libel. But certainly no particular defect can be alleged, when there is no manifest; and, of consequence, the allegation, that the manifests required by law were not made out, would be sufficient on a demurrer. They are, of course, sufficient for the present inquiry.

Another objection, on which the Court has felt great difficulty, is, that the libel does not state that the brig Mary Ann was "of the burthen of forty tons or more."

The 9th section of the act of Congress, on which this prosecution was founded, enacts, that "the captain," &c. "of any ship or vessel, of the burthen of forty tons or more," and "sailing coastwise," &c. "having on board any negro," &c. "shall, previous to the departure of such ship or vessel, make out and deliver duplicate manifests," &c. "And if any ship or vessel, being laden and destined as aforesaid, shall depart from

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the port where she may then be, without the captain, master, or commander, having first made out and subscribed duplicate manifests of every negro, mulatto, and person of colour, on board such ship or vessel, as aforesaid, and without having previously delivered the same to the said collector or surveyor, and obtained a permit, in manner as herein required," "every such ship or vessel," &c. "shall be forfeited to the use of the United States."

The first step in this inquiry, respects the extent of the clause of forfeiture. Does it comprehend vessels under forty tons burthen?

Although the language of the sentence is general, yet those rules for construing statutes, which are dictated by good sense, and sanctioned by immemorial usage, which require that the intent of the Legislature shall have effect, which intent is to be collected from the context, restrain, we think, the meaning of those terms to vessels of the burthen of forty tons and upwards.

The burthen enters essentially into the description of those vessels which can commit the offence prohibited by this section. Only vessels of forty tons or more, are directed to make out and deliver the manifests prescribed by the act; and only such vessels could obtain the permit. The whole provision must have been intended for vessels of that burthen only, or the words would have been omitted. When, then, the act proceeds, after prescribing the duty, to punish the violation of it, the words, "any ship or vessel," must be applied

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The construction of this section may receive some illustration from the 8th and the 10th.

The 8th section prohibits the commander of any ship or vessel, of less burthen than forty tons, to take on board any negro, mulatto, or person of colour, for the purposes described in the 9th section, on penalty of forfeiting, for every such negro, &c. the sum of 800 dollars. But no forfeiture of the vessel is inflicted in this section. The words imposing forfeiture are, "and if any ship or vessel, being laden and destined as aforesaid." Now, the preceding part of the section, to which these words refer, is confined to vessels of forty tons and more. The act proceeds, "shall depart," "without the commander having first made out," &c. "duplicate manifests, as aforesaid;" showing that the general words, "any ship or vessel," meant those ships or vessels only which had been directed to make out these manifests; and without having obtained a permit "in manner as herein prescribed." Now, only a vessel of forty tons and more could obtain the permit directed. The section proceeds to enact, that every such ship or vessel shall be forfeited, and the commander thereof shall moreover forfeit, for every such negro, &c. the sum of one thousand dollars.

It is perfectly clear, that this pecuniary penalty is co-extensive with the forfeiture of the vessel. But it cannot extend to the commanders of ves-

sels under forty tons, because the eighth section has inflicted on the commanders of such vessels, for the same offence, the penalty of eight hundred dollars.

The 10th section inflicts a penalty of 10,000 dollars on the commander who shall land negroes, &c. transported coastwise, without delivering to the collector the duplicate manifests prescribed by the 9th section. This section was unquestionably intended to be co-extensive with the 9th, and is, in terms, confined to vessels of the burthen of forty tons or more.

We think, that the Legislature has inflicted forfeiture for the failure to make out, subscribe, and deliver a manifest, on those vessels only which are directed to perform those acts; that is, only on vessels of the burthen of forty tons or more.

The question, then, recurs, is the omission, to charge that the brig Mary Ann was a vessel of the burthen of forty tons or more, fatal to this libel?

It is, in general, true, that it is sufficient for a libel to charge the offence in the very words which direct the forfeiture; but this proposition is not, we think, universally true. If the words which describe the subject of the law are general, embracing a whole class of individuals, but must necessarily be so construed as to embrace only a subdivision of that class, we think the charge in the libel ought to conform to the true sense and meaning of those words as used by the Legislature. In this case, if the brig Mary Ann be a vessel under forty tons, her commander is liable to a pecuniary penalty, but the Court cannot pro-

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nounce a sentence of forfeiture against her. If she be of the burthen of forty tons or more, the commander is liable to a heavier pecuniary penalty, and the vessel is forfeited. The libel ought to inform the Court, that the vessel is of that description which may incur forfeiture.

We think, therefore, that the sentence of the District Court of Louisiana must be reversed for these defects in the libel; but as there is much reason to believe, that the offence for which the forfeiture is claimed has been committed, the cause is remanded to the District Court of Louisiana, with directions to permit the libel to be amended.

Decree reversed.

DECREE. This cause came on to be heard on the transcript of the record of the District Court of Louisiana, and was argued by counsel. On consideration whereof, this Court is of opinion, that the libel filed in the said cause, is insufficient to sustain the sentence pronounced by the District Court, because it does not state, with sufficient certainty, the port in which the offence charged therein was committed; and because also, it does not allege that the brig Mary Ann was of the burthen of forty tons or more. This Court is of opinion, that the sentence of the District Court of Louisiana, condemning the brig Mary Ann, her tackle, apparel, and furniture, as forfeited to the United States, is erroneous, and doth reverse and annul the same: and this Court doth further ADJUDGE, ORDER, and DECREE, that the cause be re-

manded to the Court of the United States for the District of Louisiana, with directions to allow the libel to be amended, and to take such further proceedings in the said cause, as law and justice may require.

[Instance Court. Jurisdiction.]

The Sarah. Hazard, *Claimant.*

In cases of seizures made *on land* under the revenue laws, the District Court proceeds as a Court of common law, according to the course of the Exchequer on informations *in rem*, and the trial of issues of fact is to be by jury; but in cases of seizures *on waters navigable from the sea by vessels of ten or more tons burthen*, it proceeds as an Instance Court of Admiralty, by libel, and the trial is to be by the Court.

A libel charging the seizure to have been made on *water*, when in fact it was made on *land*, will not support a verdict, and judgment or sentence thereon; but must be amended or dismissed. The two jurisdictions, and the proceedings under them, are to be kept entirely distinct.

APPEAL from the District Court of Louisiana. This was a libel of information in the Court below, against 422 casks of wine, imported in the brig Sarah, and afterwards seized at New-Orleans, alleging a forfeiture to the United States by a false entry in the office of the collector of the port of New-York, made for the benefit of drawback, on re-exportation, and stating, that the seizure was made on waters navigable from the sea by vessels