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The Emily and the Caroline.

[Instance Court. Slave Trade Acts.]

The Emily and The Caroline, Broadfoot, *Claimant.*

A libel of information does not require all the technical precision of an indictment at common law. If the allegations describe the offence, it is all that is necessary; and if founded upon a statute, it is sufficient if it pursues the words of the law.

An information, under the Slave Trade Act of 1794, c. 187. [xi.] s. 1., which describes, in one count, the two distinct acts of *preparing a vessel* and of *causing her to sail*, pursuing the words of the law is sufficient.

Stating a charge *in the alternative*, is good, if each alternative constitutes an offence for which the thing is forfeited.

Under the above act, it is not necessary, in order to incur the forfeiture, that the vessel should be completely fitted and ready for sea. As soon as the preparations have proceeded so far, as clearly to manifest the intention, the right of seizure attaches.

APPEAL from the Circuit Court of South Carolina.

In each of these two cases, a libel of information was filed in the District Court of South Carolina, against the ship Emily and the brig Caroline, under the 1st section of the act of the 22d of March, 1794, c. 187. [xi.] prohibiting the carrying on the slave trade, from the United States to any foreign place or country; and on the 2d section of the act of the 2d of March, 1807, c. 77. [lxvii.] to prohibit the importation of slaves into the United States, after the 1st day of January, 1808. Each libel contained three counts, two upon the act of 1794, and one upon that of 1807,

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which are the same in their provisions, so far as respects this case; and the libels described the offence in the alternative, pursuing the words of the law, "that the said vessel *was fitted out* within a port or place of the United States, to wit, the port of Charleston, OR *caused to be sailed* from a port or place within the United States, to wit, the said port of Charleston, &c. for the purpose of carrying on trade or traffic in slaves," &c. A decree of condemnation was pronounced, in each case, in the District Court, which was affirmed in the Circuit Court, and the causes were brought by appeal to this Court.

Feb. 7th. The causes were argued by Mr. *Harper*, for the appellant, and by the *Attorney-General* and Mr. *M'Duffie*, for the respondent.

On the part of the appellant it was contended, (1.) That the informations were fatally defective; inasmuch as in all the counts, they charge alternatively, the commission of one or the other of two distinct and separate acts, each of which constitutes, under the statute of Congress, a distinct substantive offence; thus leaving it wholly uncertain to which of the charges the claimant was to direct his defence and proof.[a] (2.) That the proof did not sustain any of the counts, because it showed that neither of the vessels *was actually sent* from the port of Charleston, before the seizure; and did not show that either of them was so *fitted out*

a The Caroline, 7 *Cranch*, 496.

there, previous to the seizure, as to be in a condition to be sent. That the offence of fitting out, was not complete when the seizure took place, and that a mere inceptive fitting out, or an attempt to fit out, did not constitute the offence created by the acts of Congress.

For the respondents, it was argued, (1.) That the charge, with the alternative, was sufficient, both of the alternatives being illegal. The note of the reporter, correcting the account of the decision, when one of these cases (the Caroline) was formerly before this Court, was referred to, in order to show that the Court did not mean to decide in that case, that stating the charge in the alternative, would not have been sufficient, if each alternative had constituted an offence, for which the vessel would have been forfeited by the law.[a] The informations had been amended, and studiously avoided the difficulty heretofore made on account of the alternativeness of the charges. As they now stand, they are in conformity with the language of the statute which creates the forfeiture, and though still alternative in *form*, they are not so in *substance;* since both the facts charged are equally penal, and the latter part of the section merely makes either of the facts evidence of the illegal intention. The Legislature has thought fit to depart, in this instance, from the general principle of penal enactments; it aims at punish-

[a] The Caroline, 7 *Cranch*, 496. Note of errata at the beginning of the volume.

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ing the intention, and makes either of the two facts evidence of the illegal intention. Both, then, being illegal, the information has correctly charged the offence. (2.) The law requires nothing more to consummate the offence, than distinct acts, showing the *quo animo*. The offence is complete, when there is any overt act clearly indicative of the attempt to commit it. If this were not the case, and the crime were not to be considered as consummated until the preparations were complete, it would be impossible to define what was a complete preparation. Many articles might be purposely left unfinished, and completed at sea; so that the construction contended for, would furnish an effectual recipe for a fraudulent evasion of this part of the law.

Feb. 24th. Mr. Justice THOMPSON delivered the opinion of the Court.

These cases come before the Court on appeals from decrees of the Circuit Court, for the District of South Carolina, affirming the decrees of the District Court, by which the vessels in question were condemned as forfeited, under the laws of the United States, in relation to the slave trade.

The information, in both cases are the same, except as to the name and description of the vessels; and the proofs differ in no respect, but in the state of preparation in which the vessels were found at the time of seizure; but this circumstance, according to the view taken by this Court of the law, under which these forfeitures have been incurred, is unimportant, and cannot vary the result. The

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cases have been argued together, and it is unnecessary that they should be considered separately by the Court.

The informations are founded upon the first section of the act of the 22d of March, 1794, c. 187. [xi.] to prohibit the carrying on the slave trade from the United States to any foreign place or country; and on the second section of the act of the 2d of March, 1807, c. 77. [lxvii.] to prohibit the importation of slaves into the United States after the 1st of January, 1808. Each information contains three counts; two upon the act of 1794, and one upon that of 1807. These acts, however, are precisely the same in those parts which are brought under consideration in these cases, and will not require to be separately noticed.

The objections on the part of the claimant, to the decree of the Circuit Court, are,

1. The insufficiency of the informations; and

2. That the proofs fall short of what is required, under the statutes, to work a forfeiture of the vessels.

The law (2 *U. S. L.* 383.) declares, that no citizen of the United States, or any other person coming into, or residing within the same, shall, for himself or any other person whatsoever, either as master, factor, or owner, build, fit, equip, load, or otherwise prepare, any ship or vessel, within any port or place of the United States, *nor* shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade or traffic in slaves, &c. And if any vessel shall be *so fitted out as aforesaid*, for the said

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purpose, *or* shall be caused to sail so as aforesaid, every such ship or vessel shall be forfeited, &c. The first branch of the prohibiting part of this section, is very broad and comprehensive, using various terms appropriate to the preparation for a voyage. "Shall not build, fit, equip, load, or otherwise prepare any ship," &c. In the forfeiting part of the section, these various terms are not repeated, but doubtless intended to be co-extensive, and included under the words *so fitted out as aforesaid.* Under this law, then, the forfeiture is incurred, either by *fitting out*, or, in other words, preparing a vessel, within the United States; *or*, by causing a vessel to sail from the United States for the purpose of carrying on the slave trade: two distinct acts, either of which draws after it the same consequence, the forfeiture of the vessel. The informations embrace both acts in the same count, pursuing the words of the law; and it is contended that, on this account, they are fatally defective; that one or the other of the acts should have been alleged, and not both stated in the *alternative*, as has been done. Objections of this kind, made at so late a period, if not entirely precluded, are not entitled to much indulgence; they ought, if well founded, to be made at an earlier day, when the information might be amended, and great expense and delay avoided. But the exception would, at no time, be available. In admiralty proceedings, a libel in the nature of an information, does not require all the formality and technical precision of an indictment at common law. If the allegations are such as plainly and

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distinctly to mark the offence, it is all that is necessary. And where it is founded upon a statute, it is sufficient if it pursues the words of the law. And this is not at all at variance with what fell from the Court, when these cases were formerly before it, as explained by the note referred to by the Reporter, (7 *Cranch*, 496, *and note at the beginning of the vol.*) which states, "that the Court did not mean to decide, that stating the charge in the alternative would not have been sufficient, if each alternative had constituted an offence for which the vessel would have been forfeited." In the information now before the Court, it is so stated. One alternative is, *fitting out*, and the other, *causing the vessel to sail ;* either of which, if proved, would induce a forfeiture. It is said, that this mode of alleging two separate and distinct offences, leaves it wholly uncertain to which of the accusations the defence is to be directed. This objection, if entitled to consideration, would apply equally to an information laying each offence in a separate count. This might, undoubtedly, be done ; and yet no one interested in the proceedings could know, to which accusation to direct his defence. This kind of uncertainty is no objection, even to an indictment at common law. Distinct offences may be laid in separate counts, and the accused may not know upon which he is to be tried. The objection, if available at all, must go the full length of limiting every information to a single offence. This, we think, is not required by any principle of justice,

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or sanctioned by any rule of practice, applicable to Admiralty proceedings.

2. It is, in the second place, contended, that the proof does not sustain any of the counts, or show that any acts have been done, which can, under a just construction of the law, work a forfeiture of the vessels. These vessels, although cleared out, were seized before leaving the port of Charleston; of course there can be no proof applying to one of the offences laid in the information, viz. causing the vessels to sail from a port or place within the United States, &c. The proof is only applicable to the offence, which relates to the preparation of the vessels. And to incur the forfeiture under this branch of the act, it is said, the vessel must be completely fitted and ready for sea; that no state of preparation, short of this, will satisfy the terms of the law, or furnish any certain rule by which to determine when the offence has been committed, and the penalty incurred. We cannot, however, think that even applying to this law the most rigid rules of construction applicable to penal statutes, it will admit of the interpretation contended for on the part of the claimant. In construing a statute, penal as well as others, we must look to the object in view, and never adopt an interpretation that will defeat its own purpose, if it will admit of any other reasonable construction.

The object in view, by the section of the law now under consideration, was to prevent the preparation of vessels in our own ports, which were intended for the slave trade. Hence is connected

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with this preparation, whether it consists in building, fitting, equipping, or loading, the purpose for which the act is done. The law looks at the intention, and furnishes authority to take from the offender the means designed for the perpetration of the mischief. This is not punishing, criminally, the intention merely; it is the preparation of the vessel, and the purpose for which she is to be employed, that constitute the offence, and draws after it the penalty of forfeiture. As soon, therefore, as the preparations have progressed, so far as clearly and satisfactorily to show the purpose for which they are made, the right of seizure attaches. To apply the construction contended for on the part of the claimant, that the fitting or preparation must be complete, and the vessel ready for sea, before she can be seized, would be rendering the law in a great measure nugatory, and enable offenders to elude its provisions in the most easy manner. The intention or purpose for which the vessel is fitting, must be made out so as to leave no reasonable doubt as to the object. This is matter of proof, and, generally speaking, to be collected from the kind of preparation that has been made. It is unnecessary to notice minutely the evidence taken in these cases. It shows conclusively, and beyond the possibility of doubt, that both the Emily and the Caroline were fitting out for the slave trade. In this the witnesses, both on the part of the United States and the claimant, concur. All the preparations were such as were peculiarly adapted to what the witnesses call slaving vessels, and not to those for the mer-

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chant service. The ship carpenter, a witness on the part of the claimant, and who, of all others, was best qualified to give information on this subject, says, the vessels were fitting in a manner similar to that in which vessels generally are for the slave trade; that the Emily was almost complete, and the work in which he was engaged on the Caroline, was of the same character and description. There was no attempt whatever by the claimant, to explain the object of these peculiar fitments, or to show that the destination of the vessels was other than that of the slave trade. Nor has his counsel, on the argument here, set up for him any such pretence. We may, therefore, safely conclude, that the purpose for which these vessels were fitting, was the slave trade; and if so, the right of seizure attached. We can discover no sound reason for delaying the seizure until the vessels were on the point of sailing. It could only be necessary to render more certain, from their complete fitment, the purpose for which they were to be employed; and if that be satisfactorily ascertained, at an earlier stage of the preparation, the delay would be useless, and evasion of the law rendered almost certain.

Decrees affirmed.