

Sixty Pipes of Brandy.

follows, that the court were correct in refusing the evidence offered by the plaintiff.

Judgment affirmed.

*SIXTY PIPES OF BRANDY : KENNEDY & MAITLAND, Claimants. [*421

Forfeiture.

Under the duty act of 1799, c. 126, § 43, it is no cause of forfeiture, that the casks, which are marked and accompanied with the certificates required by the act, contain distilled spirits, which have not been imported into the United States, or a mixture of domestic with foreign spirits ; the object of the act being the security of the revenue, without interfering with those mercantile devices which look only to individual profit, without defrauding the government.

APPEAL from the Circuit Court of Massachusetts.

March 14th, 1825. This cause was argued by *Emmet*, for the appellants and claimants ; and by *Webster*, for the respondents.

March 18th. JOHNSON, Justice, delivered the opinion of the court.—The libel in this case contains two allegations, and the amended or supplemental libel contains a third. The first is, that these sixty pipes of brandy were imported from abroad, and landed in the port of Boston, without a permit. The second, that they were not accompanied with the marks and certificates required by law. And the third, *that they were imported from abroad, and landed in the port of New York, without a permit. [*422 To the first and third of these allegations, the record furnishes no evidence, nor, in fact, is it contended, that the article seized is to be visited by the penalties inflicted for those offences, otherwise than as an incident to the cause of forfeiture contained in the second allegation.

The passage of the law on which the libellants claim the forfeiture, is in these words : “and if any casks, &c., containing distilled spirits, &c., which, by the foregoing provisions, ought to be marked and accompanied with certificates, shall be found in possession of any person, unaccompanied with such marks and certificates, it shall be presumptive evidence, that the same are liable to forfeiture, and it shall be lawful for any officer of the customs, or of inspection, to seize them as forfeited ; and if, upon the trial, in consequence of such seizure, the owner or claimant of the spirits, &c., seized, shall not prove that they were imported into the United States according to law, and the duties thereupon paid or secured, they shall be adjudged to be forfeited.”

The fact that these casks were accompanied with certificates, is not questioned, nor that the certificates accompanying them were those which issued from the custom-house upon those identical casks. But it is contended, that the identity of the spirits is destroyed by a large admixture of other spirits ; and that, by the true construction of the law, such a change falsifies the certificate, and the casks are no longer, in the sense of *the law, “accompanied by certificates.” And further, that such a change [*423 justified the seizure, and wherever the seizure is just, the *onus probandi* is thrown upon the claimant, and he is held to comply strictly with the words of the law, and prove the spirits which they contain to have been “imported according to law, and the duties thereon paid, or secured to be paid.”

That such a construction of the law is carrying its penal effects beyond

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the literal meaning of its terms, we understand no one to deny. The words are, "if any casks, containing distilled spirits, which ought to be marked and accompanied with certificates," &c. That these words must necessarily be confined to the cask, and cannot extend to its contents, results, we think, from requiring the article to be marked, as well as accompanied with the certificate; a requisition, absurd in terms, if applied to the distilled spirits contained in the casks. And although the term, "the same," used in the member of the sentence which imposes the forfeiture, might, with grammatical correctness, be applied exclusively to the cask, and thereby produce a greater absurdity, yet it may, with as much propriety, be applied to both the cask and spirits, as its antecedent; and this application is sustained by the subsequent words of the same period; which speak expressly and exclusively of the "claimant of the spirits," and leave the cask to be claimed only as an incident to the property in the spirits.

The constituents of the offence here intended to be visited on the claimant, obviously are, *1. That the cask should contain distilled spirits. 2. That it should be one which the law requires should be marked and accompanied with a certificate, that is, one that has been used for foreign spirits. 3. That it should be found in the possession of some persons, unaccompanied with the legal mark and certificates. When these three facts concur, the property is presumed subject to forfeiture; and it follows, that unless all the constituents unite in the given case, it must be a case of innocence. But the whole argument of the libellant goes to impose a fourth circumstance as essential to the imputation of innocence, and the absence of which, of consequence, must exist in order to repel the imputation of crime; which is, that the distilled spirits in the cask should be the identical spirits imported in the cask; and this, not from any necessary construction of the language of the act, but as a deduction from the supposed policy of the act.

We are induced to adopt the opinion, that even if it were consistent with the rules of construction to give a latitude to the meaning of language used in a statute so highly penal, the language of this act is so far from sanctioning the construction here contended for, that it actually repels it; for, it is observable, that when the act goes on to declare what it shall be incumbent on the defendant to establish, in order to escape the penalty of the law, the identity of the spirits found in the cask, with that originally imported, is not required to be proved. It is only required, that *425] he should prove the spirits seized to have *been legally imported, and the duties paid, and whether in those casks, or any other cask, is altogether immaterial to his defence. Gin and brandy may interchange receptacles, and travel together in perfect security, provided they have been respectively, legally imported, and the original certificates attend the casks to which they were originally attached.

From this, we think it conclusively results, that the government had nothing in view but the security of its own revenue, without interfering with those devices of the mercantile world which look only to individual profit, without defrauding the government; and hence, that the spirit and policy of the 43d section would carry us no further than its express letter.

But there are other views of this subject which raise other questions in adjudicating on this cause. And first, it is very obvious, that if the change

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of contents of the cask could invalidate the immunities of the certificate in other cases, it could not, in the case where domestic spirits have been substituted for that imported. If the evidence establishes any adulteration in this case, it proves it to have been made by the addition of American spirits to the imported brandy. But when the act imposes upon the claimant the necessity of proving "that the spirits found in the casks were imported into the United States according to law, and the duties thereon paid or secured," it could not have intended to impose an actual impossibility, by requiring such proof as to spirits, which *ex vi termini*, *were not imported. [*426 Much less could it have intended to leave open a chance of defence, where the substitution was of foreign liquors, upon which it might, by possibility, have been defrauded, and preclude all defence as to domestic spirits, a trade in which, coastwise or in any wise, was perfectly harmless, and could not have produced a fraud upon the revenue.

But although the libellant may have failed on his second count, he is entitled to all the benefit which the law allows him under his first and third. And here, the case rests upon the general provisions of the 50th, 70th, 71st and some other sections of the revenue law, under which the collector was certainly justifiable in making any seizure, where he had reasonable ground to subject that a fraud upon the revenue, or a violation of the revenue laws, was meditated. And upon showing probable cause for such seizure, the *onus probandi* is thrown upon the claimant. Whatever was the fact, the certificates of the numerous individuals who examined this brandy, and testified to its equivocal nature, were sufficient to attract the collector's attention, and justify his instituting an inquiry, to determine whether this brandy, notwithstanding the certificates, had actually paid the duty. The brandy which had paid the duty, might, by possibility, have been drawn off, and other brandy substituted that had evaded the duty. It would be too much, also, to hold him to a correct construction of laws, which have excited doubts and elicited contrary opinions in courts of justice. The claimant, therefore, *upon the general provisions of the collection law, was properly called upon to furnish an explanation of circumstances calculated to excite reasonable suspicion. After comparing the mass of testimony which the case affords, we are led to the conclusion, that the claimant has successfully repelled the charge of illicit importation. If, as before observed, the brandy was not the identical brandy imported in these casks in which it was seized, still, all the evidence goes to prove that it was in part the same, and in part consisted of neutral spirits, which spirits two of the witnesses call American. Illegal importation, therefore, is out of the case. And the views which we have taken of the subject render it unnecessary to examine the question, whether the evidence establishes the fact of adulteration or not.

Decree of condemnation reversed, with a certificate of probable cause.