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his responsibility *in either case, it is not perceived how the placing funds in the hands of the paymaster, who continues in office, can have that effect, seeing that the latter circumstance is the necessary consequence of the former. If the law displaced the officer, upon the ground of delinquency, the placing funds in his hands, after his removal from office, could not possibly be upon the responsibility of the surety, inasmuch as his undertaking was for the faithful discharge of the duties of his principal as paymaster, and, consequently, he is not bound for his acts, after he has ceased to hold that office. The whole argument of the counsel for the defendant proceeded upon the assumption, that the office terminated, *ipso facto*, as soon as the delinquency occurred, which, we have endeavored to show, presents an incorrect view of the subject.

Whether, admitting that the surety could claim to be discharged from his responsibility, upon the ground assumed by his counsel, such a defence could be set up on the proceedings in this cause, is a question upon which the court avoids expressing an opinion, because it is rendered unnecessary, by that which has been pronounced, and because it was not argued at the bar.

The opinion of the court is, that there is error in the judgment of the court below, and that the same ought to be reversed.

Judgment reversed.

*192] *OTIS, Plaintiff in error, v. WALTER, Defendant in error.

Embargo bond.

Under the embargo act of the 25th of April 1808, c. 170, § 11, the collector is protected, in the honest exercise of his discretion, in detaining the vessel, and securing both vessel and cargo, until an actual termination of the voyage.

Whether the voyage has terminated, is a question of fact, and if the voyage be colorably, but not really, terminated, the collector may detain the vessel, if he has honest suspicions.

ERROR to the Supreme Judicial Court of the State of Massachusetts. This is the same cause which was formerly before this court. (2 Wheat. 18; 6 Ibid. 583.)

February 9th, 1826. It was argued at this term, by the *Attorney-General* and *Blake*, for the plaintiff in error; and by *Webster* and *Read*, for the defendant in error.

February 13th. JOHNSON, Justice, delivered the opinion of the court.— This cause is brought up by writ of error, from the supreme judicial court of Massachusetts, for the purpose of reviewing a judgment of that court, given in favor of the defendant here, upon an action of trover, instituted in that state, *to recover damages for the alleged conversion of sun-
*193] dry articles composing the cargo of the sloop *Ten Sisters*. Otis, in the capacity of collector of the district of Barnstable, had, in the year 1808, seized and detained the vessel and cargo, under the provisions of the embargo act of the 25th of April in that year.

This is the third time that this cause has been brought to the notice of this court. In the two former instances, it came up upon bills of exception,

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and in both, the decisions of that court were reversed, and a *venire facias de novo* awarded. In the present instance, a special verdict has been taken, and as the law was settled in the two former decisions, that until the termination of the voyage, the collector was protected in the honest exercise of an unlimited discretion in detaining the vessel, and, by necessary consequence, in resorting to the ordinary and necessary means of securing and preserving both vessel and cargo, this verdict seems to be drawn up with a view to bring up the single question, whether, in the sense of the laws of congress, and of the decisions of this court, this voyage was not, in effect, terminated, before the seizure.

The special verdict finds, that the vessel cleared out "for the port of Yarmouth." It is true, the master, in the oath attached to his manifest, makes use of the mere indefinite expression "bound for Yarmouth." But when we come to examine the sense in which he made this oath, by referring to his instructions, which are also *found by the verdict, we find it restricted to a voyage to Bass river, where it was to terminate, by [*194 landing his cargo, and storing it in a particular warehouse. This, then, was the point of his destination, call it port, harbor, place, or what we will. And as the collector uses the definite, instead of the indefinite article, before port, in the clearance, the fair inference is, that the clearance was for Bass river, under the designation of "the port of Yarmouth."

We are far, however, from intending to intimate, that if the master's oath as to his destination could not be modified and explained by reference to his instructions, it might be permitted to enlarge the meaning of the word port, as used in the clearance, so as to embrace the township of Yarmouth. In those times, when it behooved every public officer to be on the alert against the multiplied evasions of the system of that day, it is not to be supposed, that the definite language of the clearance was adopted, without an object. The master appears to have acted as if he had received a clearance, on a general voyage to Yarmouth, whereas, it is obvious, that the collector of Ipswich acted under a sense of the impropriety of giving a clearance that would leave the *terminus* of the voyage so void of precision. We consider the definite article as having been used for a definite purpose, and to preclude the general privilege of sailing to any point in the town or township of Yarmouth, at which a landing might have been effected.

It is obvious, indeed, from the whole tenor of *the verdict, that the mouth of Bass river is understood more emphatically to be the [*195 of port Yarmouth, than any other place in the township of Yarmouth. In one place, it finds, "that the harbor or port of Barnstable is about three miles from the harbor of Yarmouth;" in another, that a long point of land intervenes between "Yarmouth harbor or Bass river harbor, and Hyanis or Barnstable harbor;" in both instances, drawing an express discrimination between Yarmouth harbor, to which the vessel was bound (taking the term to be the synonyme of port), and Hyanis or Barnstable harbor, in which she was seized. Everything proves that Bass river harbor was the original destination of the vessel. In this sense, it cannot be denied, that Bass river harbor was the port to which, in the language of the law, she was "ostensibly bound." No one contends, that when at her anchorage in Hyanis bay, where she was seized, she could be considered as arrived at Bass river harbor. It was ten miles from this harbor—a peninsula interve-

ning—and as the verdict finds, the vessel had gone to Hyanis bay, after being compelled, by head winds, to pass Bass river.

But it is contended, that as her clearance was not specified to Bass river harbor, but to the port of Yarmouth, an arrival at Gage's wharf would as well have satisfied the exigencies of her case; that, in fact, she had arrived there, when anchored where she was seized, and that, having then a right *196] to demand her permit to land, and *having demanded it, the circumstances make out, a termination of the voyage, as effectually as if she had put in to Bass river.

We have already stated, we think, sufficient reasons for not admitting that the clearance could be satisfied by a destination to Gage's wharf. Yet, it cannot be denied, that there is one part of the special verdict that does throw some obscurity over this part of the case. It is that in which the jury find in these words: "that, in the practice of the custom-house for Barnstable, and of the owners and masters of vessels belonging to Barnstable district, Yarmouth and Barnstable are considered one and the same port; and that Gage's wharf, at the head of Lewis' bay, is a place in Yarmouth, at which vessels bound to that port frequently unload, and that no difference is made in the custom-house between Yarmouth and Barnstable or Hyanis, as to the entry of vessels that have arrived at either place."

If, in this passage of the verdict, the jury meant to find, that a vessel arriving in Hyanis roads, an open roadstead, not locked in by any headlands that could make a port of it, had, in fact, arrived at Gage's wharf, or Bass river, they should have been explicit; and absurd and repugnant to the geography of the country, and the common sense of mankind, as the fact would have been, we must have submitted to it, or refused to act upon it. As it is, we can only draw such inferences as the finding will sanction. And we are free to confess, that we cannot understand what is meant by a practice of the custom-house *and ship-masters of Barnstable, which con- *197] founds the open roadstead of Hyanis, with the harbor of Bass river, or even the landing-place at Gage's wharf, the one ten, the other three miles off. We can very readily conceive why the landing-place at Gage's wharf should be indifferently called Falmouth or Barnstable, since it is in the town, by the one name, and the landing-place for the port or bay, by the other name, the line crossing the bay but a few feet from the wharf. To arrive, therefore, at Barnstable harbor, or Lewis' bay or Hyanis roads, which seem to be somehow confounded in this verdict, and to arrive at the township of Yarmouth, at Gage's wharf, may be considered as one and the same thing. And yet the inference from that fact may be directly the reverse of that insisted on for the defendant in error. For, the finding is clear and positive, which distinguishes between Barnstable harbor and Yarmouth harbor; and if, then, Barnstable harbor be identified with the landing-place at Gage's wharf, the conclusion is unavoidable, that the port of Yarmouth cannot mean the landing-place at Gage's wharf. Indeed, it is impossible to arrive at the conclusion that the destination of this vessel was indifferently to Gage's wharf or Bass river, without permitting a mere inference, and that too from equivocal terms, to conflict with a positive finding of the jury, couched in the most explicit terms. And even when advanced that far, it would *198] still remain for the defendant here, to maintain that a vessel at anchor in Hyanis roads had completed her *voyage to Gage's wharf: a

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proposition as wide of the fact, with reference to the topography of the country, as it is of the intendment of law, or the finding of the jury. For the words of the special verdict are, "that the vessel, when seized, lay at anchor in the harbor, or port of Barnstable, above half a mile from the shore or beach, and about three miles from the harbor of Yarmouth." That the jury did not intend to confound Gage's wharf with the harbor of Yarmouth is distinctly shown, by the words that follow the above, declaring Gage's wharf to be six miles and a half from where the vessel was seized. Whether the jury were right, or wrong in fixing these distances, the inference we deduce from it is still the same, to wit, that the harbor of Yarmouth and Gage's wharf could not be one, no more than the port of Barnstable and the harbor of Yarmouth. The vessel lay in the former, three miles distant from the latter, and six and a half from Gage's wharf.

Upon the whole, we can discover nothing in this case, to induce us to alter the opinion entertained in the two former, that the vessel had not reached the *terminus* of her voyage, that she was *in itinere*, and therefore, liable to seizure. On the subject of the argument deduced from the demand of the permit to land, we think this also was fully answered and disposed of in the former decisions of this court, in the same suit. We are, therefore, of opinion, that the act on which the collector relies, justified the seizure; that there is error in the judgment of the court of Massachusetts; that *it must be reversed, and a judgment entered for the plaintiff here, [*199 the defendant in the original suit.

Judgment accordingly.

HINDE'S LESSEE v. LONGWORTH.

Exception.—Fraudulent conveyance.

Question as to the sufficiency of a certificate of acknowledgment of a deed of lands in Ohio. In examining the admissibility of testimony in the court above, the party excepting is to be confined to the specific objection taken at the trial.¹

Where a voluntary deed is impeached as fraudulent, evidence of judgments against the grantor is admissible, as proof (among other facts) that he was indebted at the time of making the deed, although the grantee was not a party to the suits on which the judgments were obtained.

A voluntary deed is void as to antecedent, but not as to subsequent, creditors.²

ERROR to the Circuit Court of Ohio. This was an action of ejectment, brought by the plaintiff in error, to recover the possession of the premises in the cause, described as in lot No. 107, in the town of Cincinnati.

It appeared in evidence, at the trial, that on the 28th of March 1799, Thomas Doyle, sen., under whom both parties derived title, was seised and possessed of the lot in question. The lessor of the plaintiff claimed under a deed of that date from Thomas *Doyle, sen., to his son Thomas; [*200 and the defendant set up a title under a judgment against Doyle, the elder, at the suit of John Graff, entered at the August term 1799, of the court of common pleas for the county of Hamilton. At the trial, three bills of exception were taken by the lessor of the plaintiff.

¹ Stoddard v. Chambers, 2 How. 284; Burton v. Driggs, 20 Wall. 125.

² Burbank v. Hammond, 3 Sumn. 429; Gilmore v. N. A. Land Co. Pet. C. C. 460; Hop-

kirk v. Randolph, 2 Brock. 132; Mattingly v. Nye, 8 Wall. 370; Barker v. Barker, 2 Woods 87; Graham v. Railroad Co., 102 U. S. 153