GENERAL IMPORT & EXPORT CO., INC. *v.* UNITED STATES.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 811. Argued April 15, 1932.—Decided May 2, 1932.

A vessel seized in territorial waters while carrying an unmanifested cargo of intoxicating liquors may be libeled under the Tariff Act of 1922, §§ 584 and 594, (19 U. S. C., §§ 486, 498) to enforce the money penalties thereby imposed upon the master and charged upon the vessel for his misconduct in not producing a manifest and in carrying cargo not described in a manifest. Section 26 of the National Prohibition Act does not prevent. *General Motors Acceptance Corp.* v. *United States, ante,* p. 49; *United States* v. *The Ruth Mildred, ante,* p. 67. P. 73.

56 F. (2d) 590, affirmed.

CERTIORARI, 285 U. S. 534, to review the reversal of a decree, 47 F. (2d) 336, dismissing a libel to enforce liens on a vessel.

Mr. Milton R. Kroopf, with whom *Mr. Louis Halle* was on the brief, for petitioner.

Section 26, Title II, of the National Prohibition Act is the exclusive statute under which the United States may proceed against the vessel. *Richbourg Motor Co.* v. *United States,* 281 U. S. 528.

Paragraph 813 of Schedule 8 does not refer to intoxicating liquors for beverage purposes, or if it does, it can only refer to such as may be imported consistently with the Prohibition Act. It can not afford a basis for invoking §§ 584 and 594 of the Tariff Act of 1922.

In the presence of the specific legislation in the Tariff Act as to what merchandise is prohibited, it is significant that intoxicating liquor for beverage purposes is nowhere included. Nor does it include those articles and liquors

which are enumerated in Schedule 8, for obviously that schedule refers to merchandise capable of importation.

Paragraph 813 of Schedule 8, being part of the Tariff Act, could not recognize the importation of intoxicating liquors for beverage purposes contrary to the Eighteenth Amendment. *United States* v. *Katz,* 271 U. S. 354.

The master of a vessel actually within the territorial limits of the United States, and on which intoxicating liquors are being imported, is amenable to prosecution under the National Prohibition Act; the vessel subject to seizure under § 26 of the National Prohibition Act; and the cargo forfeitable by virtue of Paragraph 813 of Schedule 8.

Strictly speaking, § 26 of the Prohibition Act is not a forfeiture statute. It does not declare forfeit the *res* although all the proceedings under it are directed to that end. The vehicle is ordered sold, but the rights of innocent lienors and owners are saved. Only to the extent of guilty interests is the *res* penalized. Nor is the guilt of the person in charge transferable to the *res.* In such respect, § 26 is a penalty statute in the same sense as the Tariff Act, § 594, with the obvious and vital difference that innocence provides a defense.

The court below in *United States* v. *One Mack Truck,* 4 F. (2d) 923, reached a conclusion irreconcilable with the one in this case.

The weight of authority is with the District Court. *United States* v. *One Ford Coupe,* 43 F. (2d) 212; *United States* v. *One Studebaker,* 45 F. (2d) 430; *Colon* v. *Hanlon,* 50 F. (2d) 353; *Corriveau* v. *United States,* 53 F. (2d) 735. See also *United States* v. *Ryan,* 284 U. S. 167.

Assistant Attorney General Youngquist, with whom *Solicitor General Thacher,* and *Messrs. Arthur W. Henderson* and *Paul D. Miller* were on the brief, for the United States.

There is no direct conflict between a forfeiture statute and a penalty statute. The two are different in theory and distinguishable in effect. It would be carrying the doctrine of implied repeal beyond reasonable bounds to hold that two statutes so essentially different could be in direct conflict. It is only by accident in this case that the penalty was so great as to exhaust the entire value of the vessel and result in her forfeiture.

In forfeiture proceedings the law operates upon the title to the property. In a penalty suit the property is merely security to insure the payment of a money penalty.

Evidence necessary to support the one proceeding is essentially different from that required in the other. Because of these differences a conflict can not exist. *Carter* v. *McClaughry,* 183 U. S. 365; *Burton* v. *United States,* 202 U. S. 344; *Gavieres* v. *United States,* 220 U. S. 338; *Morgan* v. *Devine,* 237 U. S. 632.

Mr. Justice Cardozo delivered the opinion of the Court.

The steamship "Sebastopol" was seized by Coast Guard Officers in the harbor of New York while carrying an unmanifested cargo of intoxicating liquors. The master of the vessel did not produce a manifest for the cargo when a manifest was demanded by the boarding officer. Thereafter a libel of information was filed by the Government under §§ 584 and 594 of the Tariff Act of 1922 (Act of Sept. 21, 1922, c. 356, 42 Stat. 858, 980, 982; 19 U. S. C., §§ 486, 498) for the enforcement of two liens, one of $500 for failing to produce a manifest and another for an amount equal to the value of the cargo for having on board merchandise not described in the manifest.

The District Court dismissed the libel on the ground that § 26 of the National Prohibition Act had established a system of forfeiture exclusive of any other. 47 F. (2d) 336. The Circuit Court of Appeals advanced the view

that the suit was not strictly one for the forfeiture of the vessel, but one for the enforcement of money penalties charged upon the vessel by reason of the misconduct of the master. On this ground it distinguished its own decision in the case of the *Ruth Mildred,* announced at the same time, and gave judgment for the Government.

For that reason as well as for the broader reasons stated in *General Motors Acceptance Corp.* v. *United States, ante,* p. 49, and *United States* v. *The Ruth Mildred, ante,* p. 67, the decree will be affirmed.

Affirmed.

NIXON *v.* CONDON ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 265. Argued January 7, 1932. Reargued March 15, 1932.—Decided May 2, 1932.

A statute of Texas provided: "every political party in the State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party . . ." Acting under this statute, and not under any authorization from the convention of their party, the Executive Committee of the Democratic Party in Texas adopted a resolution that only white Democrats should participate in the primary elections, thereby excluding negroes. *Held:*

1. Whatever inherent power a state political party has to determine the qualifications of its members resides in the party convention and not in any committee. P. 84.

2. The power exercised by the Executive Committee in this instance was not the power of the party as a voluntary organization but came from the statute. P. 85.

3. The committee's action was therefore state action within the meaning of the Fourteenth Amendment. P. 88.

4. The resulting discrimination violates that Amendment. P 89.

5. Whether in given circumstances parties or their committees are agencies of government within the Fourteenth or the Fifteenth