*The Garonne.

United States, Plaintiff in error, *v.* The Ship Garonne: William Skiddey and others, Claimants.

United States, Plaintiffs in error, *v.* The Ship Fortune: Vasse Manuel, Claimant.

Slave-trade.

Certain persons, who were slaves in the state of Louisiana, were, by their owners, taken to France as servants; and after some time, were, by their own consent, sent back to New Orleans; some of them, under the declarations from their proprietors, that they should be free; and one of them, after her arrival, was held as a slave. The ships in which these persons were passengers, were, after arrival in New Orleans, libelled for alleged breaches of the act of congress of April 20th, 1818, prohibiting the importation of slaves into the United States: *Held*, that the provisions of the act of congress did not apply to such cases; the object of the law was, to put an end to the slave-trade, and to prevent the introduction of slaves from foreign countries; the language of the statute cannot properly be applied to persons of color who were domiciled in the United States; and who are brought back to their place of residence, after their temporary absence.

Appeals from the District Court for the Eastern District of Louisiana. The French ship Garonne, from Havre, and the ship Fortune, also from Havre, were libelled, by several proceedings, by the United States, at New Orleans, in the district court of the United States, January 1836, under the provisions of the first section of the act of congress, passed April 20th, 1818, entitled "an act in addition to an act to prohibit the introduction of slaves into any port or place within the jurisdiction of the United States, from and after the first day of January 1808, and to repeal certain parts of the same."

The ship Garonne had arrived in New Orleans, about the 21st of November 1835; having on board a female, Priscilla, who had been born a slave in Louisiana, the property of the widow Smith, a native of that state, and resident in New Orleans. Mrs. Smith and her daughter, being in ill health, went from New Orleans, with her family, in 1835, to Havre, taking with her, as a servant, Priscilla; having previously obtained from the mayor of the city a passport for the slave, to prove that she had been carried out of the state, and that she should again be admitted into the same. Priscilla being desirous of returning to New Orleans, from Paris, was sent back on board the *Garonne, under a passport from the *chargè des áffaires* of the United States, in which she was described as a woman of color, [*74 the servant of a citizen of the United States. On the arrival of the ship, the baggage of the girl was regularly returned as that of the slave of Mrs. Smith.

The facts of the case of the ship Fortune were as follows: Mr. Pecquet, a citizen of New Orleans, went to France, in 1831, taking with him two servants, who were his slaves, as was alleged in the testimony, with an intention to emancipate them. They remained with the family of Mr. Pecquet, in France, for some time, and returned to New Orleans, at their own instance, in the ship Fortune, in 1835, as was asserted, as free persons. The passport of the American legation represented these females as domestics of

Mr. Pecquet, of New Orleans, a citizen of the United States. After their return to New Orleans, it did not appear, that they were claimed or held by the agent of Mr. Pecquet, or by any person, as slaves; but no deed of emancipation for either of them had been executed. On the arrival of the Fortune, in the list of passengers which was certified under the oath of the master, these persons, by name, were stated to be the slaves of Mr. Pecquet. The declarations of Mr. Pecquet that these persons were brought back as free, and that it was his intention that they should be free, were in evidence.

The district court of Louisiana dismissed both the libels, and the United States prosecuted these appeals.

The case was argued by *Butler*, Attorney-General, for the United States; and by *Jones*, for the defendants.

Butler stated, that in the case of the Garonne, the question was presented, whether a slave, who had been carried out of the United States by a master, could be afterwards brought back to the United States. The words of the statute are, that "it shall not be lawful to import or bring, in any manner whatsoever, into the United States," &c., "any negro, mulatto or person of color," with intent to hold, sell or dispose of "such persons as a slave, or to be held to service or labor." It is not claimed, that the United States have, under the constitutional power "to regulate commerce," a right to interfere *75] with the *regulations of states as to slaves. The powers of congress apply to foreign commerce. The words of the statute are, "import," or "bring," and the case stated in the proceedings is fairly within the law. The persons were brought into the state of Louisiana as slaves, and are here held as such. If the words of the statute comprehend the case, the court will apply them; and they will not be restrained from doing so by the supposition that the case to which they apply was not intended by congress.

In the case of the ship Fortune, the attorney-general argued, that there was error in the decree of the district judge in dismissing the libel of the United States, on the ground, that as the persons of color brought into New Orleans were free, the act of congress was not violated. This was not the issue; the allegation on the part of the United States is, and the evidence establishes, that persons of color were brought into the United States by the ship Fortune, and that they were to be held to service or labor, either as slaves or otherwise. In either case, the law is broken, and the penalties are incurred by the ship.

It is not necessary ts show that the persons were held as slaves, after their arrival in New Orleans. Were they brought into the United States as slaves? This is established by the list of passengers sworn to by the master of the ship. After naming them, he states, "these two negresses are slaves of Mr. Pecquet, and are sent to New Orleans by their master." In the *United States* v. *Gooding*, 12 Wheat. 460; it was decided, that the declarations of the master of a ship, in the transactions of the vessel, being a part of the *res gestæ*, are competent evidence of the voyage. The declaration of the master in this case was in the course of his duty. If the persons were brought to the United States, not as slaves, but to be held to service or labor, the case is the same.

If the construction given by the district court of Louisiana is maintained,

the act of 1807, to which this is a supplement, will be defeated. The objects and purposes of that law were, to prevent any persons of color being brought into the United States, to be held to service or labor. If evidence of intention is to acquit, the law will be null. The question is, whether not having made the persons brought in the vessel free, the intention only to emancipate them, will operate to defeat the law? Suppose, the intention of the owner, or his instructions to his agent, not carried into effect, how would the *case stand? Could not the persons have been sold as slaves after their arrival? Would the intention to emancipate them give a substantial claim to freedom? [*76

Congress had power to pass this law. They may have thought, that if an owner of slaves carried them to a foreign country, he ought not to be allowed to bring them back.

Jones, for the claimants of the Garonne, and for the claimants of the Fortune.—The government of the United States has no right to interfere with the property of the owners of slaves; nor was it the object of the law on which these proceedings are founded, to do so. The persons who were brought in the Garonne, were slaves in Paris; and when they returned, they came to a domicil they had never lost. Sojourning in France, did not deprive them of their domicil. The case may be illustrated, by supposing a Maryland gentleman shall take his slave with him, when travelling, into Virginia. He could not, according to the principles contended for by the United States, bring him back. But this is a misconception of the law. It was intended to apply to persons brought from foreign countries, and who were so imported for the purpose of their being slaves. Its whole application is to the slave-trade. To prohibit the return of slaves from a foreign country, to which they may have accompained their owners, is a direct interference with the rights of those owners; and is against the constitution of the United States.

But if these views of the case left it in any doubt, the whole of the case of the Fortune shows that the persons of color brought from Havre, were free. They had been discharged from slavery by their master, and were entitled to be emancipated. In a court of equity, their claim to freedom could have been substantiated. All the facts of the case exclude the supposition that they were to be held to service or labor.

Taney, Ch. J., delivered the opinion of the court.—These two cases are appeals from decrees of the district court for the eastern district of Louisiana, upon libels filed by the district-attorney, against these said ships, their tackle, apparel and furniture; for alleged breaches of the act of congress of April 20th, 1818 (3 U. S. Stat. 450), prohibiting the importation of slaves into the United States.

In the case of the ship Garonne, the facts were admitted by the *parties in the court below, and are in substance, as follows: Priscilla, a person of color, born in Louisiana, was a slave; the property of the widow Smith, who was a native of the same state. Mrs. Smith, and her daughter, Madame Couchain, being in an ill state of health, left New Orleans, with her family, for France, in 1835, taking with her as a servant, the above-mentioned girl. Priscilla being desirous of returning to New Orleans, Mr. Couchain, the son-in-law of Mrs. Smith, through the interven- [*77

tion of a friend, procured for her a passage in the ship Garonne from Havre to New Orleans; and since her arrival at that place, she has lived at the house of Mrs. Smith, and is held as her slave.

Upon this statement of facts, the question is presented, whether Mrs. Smith, a resident of Louisiana, going abroad, and sojourning for a time in a foreign country, and taking with her one of her slaves, as an attendant, may lawfully bring, or send her back to her home, with intent to hold her as before in her service. It does not appear from the evidence, or admissions in the case, whether the laws of France gave the girl a right to her freedom, upon her introduction into that country. But this omission is not material to the decision. For even assuming that, by the French law, she was entitled to freedom, the court is of opinion, that there is nothing in the act of congress under which these proceedings were had, to prevent her mistress from bringing or sending her back to her place of residence; and continuing to hold her as before, in her service.

The object of the law in question was, to put an end to the slave-trade; and to prevent the introduction of slaves into the United States, from other countries. The libel in this case was filed under the first section of the act, which declares, "that it shall not be lawful to import or bring in any manner into the United States or territories therof, from any foreign kingdom, place or country, any negro, mulatto or person of color, with intent to hold, sell or dispose of such negro, mulatto or person of color, as a slave, or to be held to service or labor;" and then proceeds to make the vessel liable to forfeiture, which shall be employed in such importation. The language of the law above recited, is obviously pointed against the introduction of negroes or mulattoes who were inhabitants of foreign countries, and cannot properly be applied to persons of color who are domiciled in the United States, and who are brought back to their place of residence, after a temporary absence. In the case before the court, although the girl had been staying for a time in *France, in the service of her mistress; yet in construction of law, she continued an inhabitant of Louisiana, and her return home in the manner stated in the record, was not the importation of a slave into the United States; and consequently, does not subject the vessel to forfeiture.

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If the construction we have given to this section of the law needed confirmation, it will be found in the exception contained in the fourth section of the law in relation to persons of color, who are "inhabitants, or held to service by the laws of either of the states or territories of the United States." This section prohibits our own citizens, and all other persons resident in the United States, from taking on board of any vessel, or transporting from any foreign country or place, any negro or mulatto, "not being an inhabitant, nor held to service by the laws of either of the states or territories of the United States." Under this section, the mere act of taking or receiving on board the colored person, in a foreign country, with the intent to sell, or hold such person in slavery, constitutes the offence. But inasmuch as Priscilla was an inhabitant of New Orleans, and held to service by the laws of Louisiana, if the master of an American vessel had taken her on board at Havre, for the purpose of transporting her to Louisiana, there to be held in slavery, it is very clear, that by reason of the exception above-mentioned, the act of receiving her in his vessel for such a purpose, would have been

no offence; while the taking on board of a negro or mulatto, who was the inhabitant of any other country, would have been a high misdemeanor, and subjected the party to severe punishment, and the vessel to forfeiture. It would be difficult to assign a reason for this discrimination, if the persons of color described in the exception, could not be brought to this country, without subjecting the vessel to forfeiture; and the exception made in this section, in relation to those who are inhabitants, or held to service by the laws of either of the states or territories of the United States, proves that congress did not intend to interfere with persons of that description, nor to prohibit our vessels from transporting them from foreign countries back to the United States.

The principles above stated decide also the case of the *United States* v. *The Ship Fortune*. We think, there is enough in the record, to show that the persons of color therein mentioned, were sent to New Orleans, the place of their residence, for the purpose of being there manumitted, and not to be held in slavery. But it is *unnecessary to go into an examination of the evidence on this point; because, in either case, the bringing [*79 them home was not an offence against the act of congress, and the vessel in which they returned is not, on that account, liable to seizure and condemnation. The decree of the district court must, therefore, be affirmed, in each of these cases.

THESE causes came on to be heard, on the transcripts of the record from the district court of the United States for the eastern district of Louisiana, and were argued by counsel: On consideration whereof, it is now here ordered and decreed by this court, that the decree of the said district court, in each of the causes, be and the same is hereby affirmed.

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*THOMAS EVANS, Plaintiff in error, *v.* STERLING H. GEE. [*80

Jurisdiction.— Bills of exchange.— Waiver of irregularities.

A bill of exchange was drawn in Alabama, by a citizen of that state, in favor of another citizen of Alabama, on a person at Mobile, who was also a citizen of that state; it was, before presentation, indorsed in blank by the payee, and became, *bonâ fide*, by delivery to him, the property of a citizen of North Carolina; and by indorsement subsequently made upon it, by the attorney of the indorsee, the blank indorsement was converted into a full indorsement, by writing the words, "pay to Sterling H. Gee," the plaintiff, over the indorser's name; the bill was protested for non-acceptance, and a suit was instituted on it, before the day of payment, against the indorser, in the district court of the United States for the district of Alabama. The district court rejected evidence offered by the defendant, to show that the bill was given by him to the partner of the plaintiff, a resident in Alabama, for property owned by him and the plaintiff, they being copartners; that the indorsement, when given, was in blank, and that the drawer and drawee of the bill are also citizens of Alabama; the district court also instructed the jury that the indorsement in blank, authorized the plaintiff to fill it up as had been done; and that the plaintiff was, under the law of Alabama, entitled to recover ten per cent. damages the bill not having been accepted: *Held*, that there was no error in the instructions of the district court: evidence to show that the original parties to the bill of exchange were citizens of the same state, if offered to affect the jurisdiction of the court, was inadmissible, under the general issue; a plea to the jurisdiction should have been put in.[1]

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[1] Sime *v.* Hundley, 6 How. 1; Smith *v.* Kernochan, 7 Id. 216; Railroad Co. *v.* Quigley, 21 Id. 202.