

THE DECISIONS
OF THE
SUPREME COURT OF THE UNITED STATES,
AT
JANUARY TERM, 1850.

THE UNITED STATES, APPELLANTS, *v.* BURROUGHS E. CARR AND JOHN PECK, CLAIMANTS OF SIXTEEN BOXES OF HAVANA SUGAR, TWELVE BASKETS OF CHAMPAGNE WINE, &c.

THE UNITED STATES, APPELLANTS, *v.* BURROUGHS E. CARR AND JOHN PECK, CLAIMANTS OF TEN BOXES, TWENTY HALF-BOXES, AND SIX QUARTER-BOXES OF RAISINS, FOUR KEGS OF GRAPES, &c.

The sixteenth section of the act of Congress, passed on the 18th of February, 1793, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same" (1 Stat. at L., 305¹), prescribes the manner in which foreign merchandise shall be specified in the manifest of a vessel going coastwise, and imposes a pecuniary penalty upon the master for failing to comply with it; but does not forfeit the goods.

The forfeiture provided in the seventeenth section was intended to apply to cases where the foreign merchandise was not included at all in the manifest, and not to cases where it was included in fact, although not with legal precision, and where there was no bad faith.²

The act of May 31st, 1844 (5 Stat. at L., 658), gives jurisdiction to this court in revenue cases, without regard to amount, only where the judgment is rendered in a Circuit Court of the United States. Therefore, where the case was brought from the Court of Appeals for the territory of Florida, and the amount in controversy did not exceed one thousand dollars, the case must be dismissed for want of jurisdiction.³

¹ Rev. Stat., § 4371.

² A coasting vessel arriving at one district from another in the same state, with foreign goods on board exceeding \$800 in value, without a manifest thereof, does not thereby incur a forfeiture under the act of 1793. *The America*, 1 Gall., 231.

³ CITED. *Seaver v. Bigelows*, 5

Wall., 210. The act of 1844 includes cases affecting the revenue of the post office department. *United States v. Bromley*, 12 How., 88; but does not embrace the case of an action against a collector to recover back duties paid under protest, where the amount recovered is less than \$2,000. *Mason v. Gamble*, 21 How., 390.

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THESE two cases were brought, by appeal, from the Court of Appeals for the Territory of Florida, and were argued together. The questions involved were the same in both. The first of the two cases was this:

In January, 1844, the schooner Hope W. Gaudy was about to sail from the port of New York to that of St. Augustine in Florida, the vessel being licensed for carrying on the coasting trade. Maurice Gaudy, the captain of the schooner, produced to the collector of New York the following manifest, viz.:—

Manifest of the cargo on board the schooner Hope W. Gaudy, Gaudy, master, burden one hundred and forty tons, bound from New York for St. Augustine, Fla., January 13th, 1844.

Marks.	N ^o .	Packages and contents.	Shippers.	Residence.	Consignees.	Residence.
B. E. C. & Co.	1	Eighteen hundred and fourteen packages mdse.	John Peck	New York	B. E. Cantello	St. Augustine.
J. M. H.	2	Three pack. mdse.	Do.	Do.	J. M. Hernandez.	Do.
C. Burt & Co.	3	Eleven do. do.	Do.	Do.	G. Burt & Co.	Do.
S. S. P.	4	Twenty-three do.	Do.	Do.	S. S. Peck.	Do.

MAURICE GAUDY.

The oath taken by Gaudy, and the permit to sail granted by the collector of New York, were as follows:—

L. I, Maurice Gaudy, master of the schooner Hope W. Gaudy, do solemnly swear to the truth of the annexed D. C. manifest; and that, to the best of my knowledge and belief, all the goods, wares, and merchandise of foreign growth or manufacture therein contained, were legally imported, and the duties thereon paid or secured; so help me God.

MAURICE GAUDY.

Sworn to this 13th day of , 1844.

G. W. DAVIS, *D'y Col.*

District of New York, Port of New York:

M. Gaudy, master of the schooner Hope W. Gaudy, of Cape May, having sworn, as the law directs, to the annexed manifest, consisting of four articles of entry, and delivered duplicate thereof, permission is hereby granted to the said schooner to proceed to the port of St. Augustine, in the state of Florida.

Given under our hands, at New York, this 13th day of January, 1844.

D.
W. D. K.

G. W. DAVIS, *D'y Collector.*
J. DAVENPORT, *D. Naval Officer.*

On the arrival of the vessel at St. Augustine, the manifest

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was presented to the collector, who made upon it the following indorsement:—"No. 3 A, inward schr. Hope W. Gaudy, of Cape May, Maurice Gaudy, master, 140 $\frac{7}{9}$ tons, from New York, entered January 25th, 1844."

On the 29th of January, 1844, the District Attorney of the United States filed, in the Superior Court for the District of East Florida, a libel against "sixteen boxes of sugar, twelve baskets of Champagne wine, twenty-five sacks of Liverpool salt, five cases and five baskets of olive oil, ten boxes of French cordial, seven casks of London porter, two casks of [*3 Scotch ale, *two half-pipes of French brandy, one pipe Holland gin, thirty half-boxes and twenty-four quarter-boxes of raisins, ten bags of cassia, two boxes of citron, five chests of tea, one frail (or basket) of almonds, three drums of figs, two boxes of lemons, and ten bags of coffee."

The libel alleged that the said merchandise was not (nor was any part thereof) specified or certified in the manifest of the cargo of the said vessel, as is required by the act of the Congress of the same United States, in such case made and provided, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

The libel then claimed that the merchandise had become forfeited to the uses specified by law.

In March, 1844, Burroughs and Carr filed their claim as owners of the goods. After sundry proceedings which it is not material to state, the cause came up for hearing, when the judge dismissed the libel. The United States carried it to the Court of Appeals, which affirmed the judgment of the court below. An appeal was then taken to this court.

The act of Congress under which the libel was filed was the act of 18th February, 1793, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same." 1 Stat. at L., 305.

By the sixteenth section, it is enacted, that "the master or commander of every ship or vessel licensed for carrying on the coasting trade, and being destined from any district of the United States to a district other than a district in the same or an adjoining state on the sea-coast, or on a navigable river, shall, previous to her departure, deliver to the collector residing at the port where such ship or vessel may be, if there is one, otherwise to the collector of the district comprehending such port, or to a surveyor within the district, as the one or the other may reside nearest to the port at which such ship or vessel may be, duplicate manifests of the whole cargo on board such

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ship or vessel, or if there be no cargo on board, he shall so certify; and if there be any distilled spirits, or goods, wares, and merchandise of foreign growth or manufacture on board, other than what may by the collector be deemed sufficient for sea stores, he shall specify in such manifests the marks and numbers of every cask, bag, box, chest, or package containing the same, with the name and place of residence of every shipper and consignee of such distilled spirits, or goods of foreign *4] growth or manufacture, and the quantity shipped by and for *each, to be by him subscribed, and to the truth of which he shall swear or affirm; and shall also swear or affirm before the said collector or surveyor, that such goods, wares, or merchandise, of foreign growth or manufacture, were to the best of his knowledge and belief legally imported, and the duties thereupon paid or secured; or if spirits distilled within the United States, that the duties thereupon have been duly paid or secured; upon the performance of which, and not before, the said collector or surveyor shall certify the same on the said manifests, one of which he shall return to the master, with a permit thereto annexed, authorizing him to proceed to the port of his destination. And if any such ship or vessel shall depart from the port where she may then be, having distilled spirits, or goods, wares, or merchandise of, foreign growth or manufacture on board, without the several things herein required being complied with, the master thereof shall forfeit one hundred dollars; or if the lading be of goods the growth or manufacture of the United States only, or if such ship or vessel have no cargo, and she depart without the several things herein required being complied with, the said master shall forfeit and pay fifty dollars."

And by the seventeenth section it is enacted, that "the master or commander of every ship or vessel licensed to carry on the coasting trade, arriving at any district of the United States, from any district other than a district in the same or an adjoining state on the sea-coast, or on a navigable river, shall deliver to the collector residing at the port she may arrive at, if there be one, otherwise to the collector or surveyor in the district comprehending such port, as the one or the other may reside nearest thereto, if the collector or surveyor reside at a distance not exceeding five miles, within twenty-four hours, or if at a greater distance, within forty-eight hours next after his arrival, and previous to the unlading any of the goods brought in such ship or vessel, the manifest of the cargo, (if there be any,) certified by the collector or surveyor of the district from whence she last sailed, and shall make oath or affirmation, before the said collector or surveyor, that there

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was not, when she sailed from the district where his manifest was certified, or has been since, or then is, any more or other goods, wares, or merchandise of foreign growth or manufacture, or distilled spirits (if there be any other than sea stores on board such vessel) than is therein mentioned; and if there be no such goods, and if there be no cargo on board, he shall produce the certificate of the collector or surveyor of the district from which she last sailed as aforesaid, that such [5 is the case; whereupon such collector *or surveyor shall grant a permit for unlading the whole or part of such cargo (if there be any) within his district, as the master may request; and where a part only of the goods, wares, and merchandise of foreign growth or manufacture, or of distilled spirits, brought in such ship or vessel, is intended to be landed, the said collector or surveyor shall make an indorsement of such part on the back of the manifest, specifying the articles to be landed; and shall return such manifest to the master, indorsing also thereon his permission for such ship or vessel to proceed to the place of her destination. And if the master of such ship or vessel shall neglect or refuse to deliver the manifest, (or if she has no cargo, the certificate,) within the time herein directed, he shall forfeit one hundred dollars; and the goods, wares, and merchandise of foreign growth or manufacture, or distilled spirits, found on board, or landed from such ship or vessel, not being certified as is herein required, shall be forfeited, and if the same shall amount to the value of one hundred dollars, such ship or vessel, with her tackle, apparel, and furniture, shall be also forfeited."

The second of the two cases mentioned in the commencement of this report was similar in its circumstances to the case just stated, except that the goods were brought to St. Augustine in a different vessel, and that the value of the goods was shown by appraisement to be only seventy dollars.

The cases were argued by *Mr. Johnson* (Attorney-General), for the United States, and by *Mr. Wood*, of New York, for the claimants.

Mr. Johnson said that three questions were involved in the case:—

1. Whether the manifest of itself was a sufficient compliance with the sections above quoted of the act of Congress.
2. Whether, if defective, the defect is cured by the certificate of the collector of New York.
3. Whether, if the manifest be in violation of the act, the defect works a forfeiture of the goods.

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1st. The manifest was not made out according to law. The 16th section regulates the conduct of the master at the port of departure. He must deliver to the collector a duplicate manifest of his cargo; and must also, if there is any merchandise on board of foreign growth or manufacture, specify the marks and numbers of every cask, bag, box, &c., containing such articles. The object of this is to enable the collector at the port of destination to identify these boxes as being the same which had once paid duties at the custom-house. *6] He must also *make oath that the goods were legally imported. All this being done, the collector is authorized to give him a permit of departure. But it must be evident from an inspection of the record, that the master has not complied with the law. The manifest only says 1,814 packages of merchandise. What was there to prevent the master from substituting other packages, exchanged at sea, for those which he had on board at the time of his departure from New York? The act requires a distinct specification of all the marks on all the boxes. But here it is not even stated whether they contained foreign merchandise or not. The collector at New York could also refer to the marks on the boxes, and ascertain, by the records of his office, whether or not such boxes had been regularly imported; but if the construction contended for on the other side be correct, smuggled goods could be transported coastwise just as easily as those which had paid duties.

2d. The certificate of the collector at New York does not heal this defect. He is only authorized to certify in case all the requisitions of law are complied with. If his certificate is conclusive, then he is invested with judicial power, and neither the collector of the port to which the vessel is going, nor the district judge, can properly interfere. The manifest is no longer subject to their supervision; although the authority of the first collector to certify is limited to the case of previous compliance with the law on the part of the master. The 16th section says, if he (the master) shall depart "without the several things herein required being complied with," &c.; showing that a compliance with a part would not be sufficient. The power of the collector of New York was therefore limited, and his certificate could not heal the defect in the manifest.

3d. Are the goods subject to forfeiture?

The last paragraph of the 17th section must be construed to refer to the 16th. It says that the "merchandise, not being certified as is herein required," shall be forfeited, and in certain cases the vessel also. But if we show that the merchandise is not certified as the 16th section requires, the forfeiture attaches.

Mr. Wood made the following points:—

1. The manifest in these cases is correct, and made out according to long-established usage.

2. It is sufficient, under the 16th and 17th sections of the act of 18th February, 1793, to insert in the manifest the marks and numbers of the casks, boxes, packages, &c., containing foreign merchandise, with the name and residence of every shipper and consignee thereof, and the quantity shipped by and to each.

*3. All this is done in the manifest in this cause.

4. This provision of the act necessarily and impliedly [*7 requires that the foreign merchandise from one shipper to a consignee shall be distinguished from every other consignment, when either the consignee or shipper, or both, are different, but it does not require that the foreign and domestic merchandise consigned by any one shipper to any one consignee shall be so differently numbered and marked as that the foreign merchandise can, by the numbers and marks, be distinguished from the domestic merchandise.

5. Such distinction in the manifest between the marking and numbering of foreign and domestic merchandise, consigned by one and the same shipper to one and the same consignee, has never been made in practice, and the long-established usage must be considered as settling the construction of the act.

6. The manifest in question is conformable to the most approved precedents. (See *American Lex Mercatoria*, Appendix.)

7. Assuming that the manifest ought to have been more specific, and so as to distinguish between the foreign and domestic merchandise consigned by one and the same shipper to one and the same consignee, yet the certificate of the collector thereon, and the oath of the master, being correct, and according to the provisions of the said 16th section, the goods are not forfeited under the 17th section of said act, but the master only is subjected to the forfeiture of one hundred dollars under the said 16th section.

8. The forfeiture of the goods under the 17th section is confined to the case where the goods are not certified as required.

9. Penal laws are to be strictly construed, and the interpretation of revenue laws is in favor of the subject, especially in the case of forfeiture of goods for acts not done by the owner thereof. *Hubbard v. Johnstone*, 3 Taunt., 177; *Chests Tea v. U. States*, 1 Paine, 499.

10. The legislature, in applying the pecuniary penalty upon

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the master to any defect in the manifest and certificate in the particulars enumerated in the 16th section, and in limiting the forfeiture of the goods to the prejudice of the owner thereof, in the 17th section, to a defect in the certificate, clearly meant to narrow the ground of forfeiture of the goods, and to confine it to a case of a defect in the certificate, *per se*.

11. If every defect in the manifest should be deemed to extend to the certificate, and to render that defective by relation, so as to cause a forfeiture of the goods to the owner, it would confound the distinction clearly drawn by the act between the *two cases, and would deprive the owner of *8] the goods of those salutary rules of construction above referred to.

Mr. Chief Justice TANEY delivered the opinion of the court.

The first of these cases arises upon a libel filed in the Superior Court for the District of East Florida, against certain goods which were brought into the port of St. Augustine, in the schooner Hope W. Gaudy, and there seized by the collector as forfeited, for an alleged violation of the revenue laws. The appellants appeared as claimants; and at the trial in the Superior Court, the libel was dismissed, and the decree of dismissal afterwards affirmed in the Court of Appeals for the territory of Florida. From this last-mentioned decree the United States appealed to this court.

The Hope W. Gaudy was regularly licensed to carry on the coasting trade; and the goods in question were part of a cargo shipped at New York for the port of St. Augustine. The master of the schooner, previous to his sailing from New York, delivered a manifest of his cargo to the collector, in which the goods seized were included, with the proper affidavit annexed; and the collector indorsed upon it the certificate and permit to proceed on the voyage, as required by the act of February 18, 1793. This manifest, so certified and indorsed, was in due time after the arrival of the vessel delivered to the collector of St. Augustine.

There is no imputation of bad faith in this transaction, upon the master or owners, or any of the parties concerned. But the forfeiture was supposed to have been incurred by a breach of the provisions of the 16th and 17th sections of the act of Congress above mentioned. Part of the cargo consisted of foreign merchandise. And it was insisted, on the part of the United States, that this portion of it was not marked and described in the manifest, in the manner required by the 16th

section, and was on that account liable to seizure and forfeiture at the port of destination.

We do not think it material to inquire whether the manifest did or did not describe with legal precision the foreign merchandise which the master had taken on board when he sailed from New York. For if the manifest be liable to that objection, the 16th section, which prescribes the manner in which foreign merchandise shall be specified in the manifest, punishes the omission by a small pecuniary penalty on the master: but does not forfeit the goods.

Neither does the clause of forfeiture in the 17th section apply to imperfections of that description. The manifest, which *the master is required by this section to [9 deliver at the port of destination, is the one certified by the collector at the port of shipment, and this he did deliver. And the law forfeits the foreign merchandise, or distilled spirits, found on board or landed from the vessel, in those cases only in which it is not included in the manifest certified as aforesaid. This is evidently the meaning of the law. But the record in this case shows that the goods seized were included in the manifest; and whether they were there described with legal precision or not is immaterial to this inquiry. For a defect in that respect, where there is no fraud, does not subject the goods to forfeiture, either at the port of shipment or the port of delivery. Indeed, it can hardly be supposed that an offence, which in the 16th section is punished by a small pecuniary penalty on the master, was intended in the succeeding section of the same law to be visited on the owner, and subject him to the aggravated punishment of the forfeiture of his goods; and the more especially as the defect, if any, was the fault of the public officer, who was apprised by the oath of the master to the manifest that foreign merchandise was on board, and whose duty it was, when thus informed, to see that it was designated and described as the law requires before he granted the certificate and permit to proceed on the voyage.

The decree of the Court of Appeals for the territory of Florida must therefore be affirmed.

The other case between the same parties, now before us, is similar in all respects to the one in which I have just stated the opinion of the court. But the record shows that the value of the goods in controversy in this case is only seventy dollars.

The act of May 31, 1844, which gives appellate jurisdiction to this court in revenue cases, without regard to the sum in dispute, gives it only where the judgment is rendered in a Circuit Court of the United States. Consequently, it does

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not apply to a judgment rendered in the Court of Appeals for the territory of Florida. The right to appeal from that court is regulated by the act of May 26, 1824. And that act limits the appellate power of this court to cases in which the amount in controversy exceeds one thousand dollars.

This case must therefore be dismissed for want of jurisdiction.

Orders.

THE UNITED STATES v. CARR AND PECK, CLAIMANTS OF
SIXTEEN BOXES OF HAVANA SUGAR, &C.

*10] This cause came on to be heard on the transcript of the record *from the Court of Appeals for the territory of Florida, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Court of Appeals in this case be, and the same is hereby, affirmed.

THE UNITED STATES v. CARR AND PECK, CLAIMANTS OF
TEN BOXES, &C., OF RAISINS.

This cause came on to be heard on the transcript of the record from the Court of Appeals for the territory of Florida, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that this cause be, and the same is hereby, dismissed for the want of jurisdiction.

HARRIET V. LADD, BY HER NEXT FRIEND, MONTGOMERY D. CORSE, COMPLAINANT AND APPELLANT, v. JOSEPH B. LADD, JOHN H. LADD, THE FARMERS' BANK OF ALEXANDRIA, JOHN HOOFF, BENONI WHEAT, AND JOHN J. WHEAT, THE TWO LAST TRADING UNDER THE FIRM OF BENONI WHEAT AND SON, DEFENDANTS.

Where a married woman has power, under a marriage settlement, to dispose of property settled upon her, by the execution of a power of appointment for that purpose, and alleges afterwards that she executed the power under undue marital influence and through fraud practised upon her, but alleges no specific mode or act by which this undue marital influence was exerted, and the facts disclosed in the testimony go very far to contradict the allegation, the charge cannot be sustained.

Every feme covert is presumed, under such a settlement, to be, to some extent, a free agent.

Where the marriage settlement recited that the woman was possessed of a considerable real and personal estate, which it was agreed should be settled to her sole and separate use with power to dispose of the same by appoint-