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person by that name engaged in the shipping business in the port of New York. Two or more clearance clerks were examined, and they testify that they never heard of a business man there of that name. Persons who have for years been engaged in the China and African trades were also examined, and they testify to the same effect. Even Schmidt, the ship-broker and partner of the person who sold the vessel for twelve thousand dollars, testifies that he never saw him but once, and that was in the street, and that he did not know whether he was the actual owner, or merely the agent of the real purchaser of the vessel. Woodbury, the grantor of the vessel, was not called by the claimant. When the appeal was taken in the Circuit Court, the petition was signed by his counsel, and the bond given on the appeal, although drawn for the signature and seal of the claimant, was executed only by a surety, and the surety testifies that he never heard of such person until the morning of the day when his examination as a witness took place. Neither the master nor any of the crew are called to explain any of these inculpatory circumstances, nor is there any attempt to afford any explanation upon the subject. For these reasons, we are of the opinion that the finding in the court below was clearly correct. The decree of the Circuit Court is, therefore,

AFFIRMED.

THE SLAVERS. (REINDEER.)

1. A vessel begun to be fitted, equipped, &c., for the purpose of a slave-voyage, in a port of the United States, then going to a foreign port, in order evasively to complete the fitting, equipping, &c., and so completing it, and from such port continuing the voyage, is liable to seizure and condemnation when driven in its subsequent course into a port of the United States.
2. In libels for the alleged *purpose* of violating the acts of Congress prohibiting the trade in slaves, a wide range of evidence is allowed. Positive proofs can seldom be had; and a condemnation may be made on testimony that is circumstantial only, if the circumstances be sufficiently numerous and strong, and especially if corroborated by moral coincidences.

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3. Libels *in rem* may be prosecuted in any district of the United States where the property is found.

THE bark Reindeer, Cunningham, master, was forced by stress of weather into Newport, R. I., July 11, 1862, where the collector of the port immediately placed her in custody of a revenue officer. On the 1st of August he made a formal seizure of her for violating the laws relating to the slave-trade. On the 7th of August following, the United States filed a libel and information in the District Court for Rhode Island, against the bark, her tackle, cargo, &c., in a case of seizure and forfeiture, alleging,

First. The fitting and other preparation of the vessel within, and causing her to sail from, the port of New York, by a citizen or resident, &c., of the United States, for the purpose of carrying on a trade in slaves, contrary to the provisions of the first section of the act of Congress of 22d March, 1794,* &c.

Second. The employment and making use of the said vessel by a citizen or persons, &c., residing in the United States, in the transportation or carrying of slaves, &c., contrary to the provisions of the first section of the act of 10th May, 1800;† and,

Third. The fitting, &c., of said vessel within, and causing her to sail from, the port of New York, by a citizen or citizens of the United States, or other person or persons, for the purpose of procuring negroes, mulattoes, or persons of color, &c., to be held, sold, or otherwise disposed of as slaves, &c., contrary to the provisions of the second section of the act of 20th April, 1818,‡ &c.

On the 28th of August, 1861, one Gregorio Tejedor, said to be a Spanish subject, residing at Havana, and alleging himself to be owner of the cargo and charterer of the bark, intervened, averring that he was the *bonâ fide* owner of the cargo and charterer of the vessel.

On the 2d of September, 1861, D. M. Coggeshall, sheriff of the county of Newport, and H. P. Booth, J. E. Ward,

* 1 Stat. at Large, 347. † 2 Id. 70. ‡ 3 Id. 450.

and Samuel Shephard, alleging themselves to be attaching creditors of one Pearce of New York, owner of the vessel, filed a claim and answer, denying the allegation of the libel that the vessel was a slaver. They also averred that Coggeshall, as sheriff, on the 20th July, 1861, again on the 26th July, 1861, seized and attached the bark, by virtue of attachments duly issued out of the Supreme Court of Rhode Island; that, by virtue thereof, he then became possessed of her, and ever since has held, and, by reason thereof, that this court has no jurisdiction of the vessel, &c. They also averred that the acts charged were stated to have been done at New York, and not within the district of Rhode Island, and therefore denies jurisdiction.

During the progress of the cause, the vice-consul of the Queen of Spain, at Boston, filed a claim, professing to intervene "for the Government of her Catholic Majesty," and claiming the bark and cargo as the property of Gregorio Tejedor, a Spanish citizen. But there was no sufficient evidence that he was authorized to do this by the Government of Spain, or that the Government participated in the controversy in the court below.

The District Court condemned the vessel, cargo, &c., from which decree, *Coggeshall, sheriff, and Booth, Ward, and Shephard*, appealed to the Circuit Court. Tejedor also prayed an appeal, but did not take it.

So far, therefore, as the interests and rights of Tejedor were concerned, the decree of the District Court was final, and could not be here disturbed.

The Circuit Court ordered a sale of the vessel, &c., and cargo; and, on the 20th of January, 1862, the marshal sold her for $3000, and the cargo for $7756.52.

The Circuit Court heard the case on the appeal of Coggeshall, Ward, Booth, and Shephard, and affirmed the decree of the District Court, from which decree the said Coggeshall, Ward, Booth, and Shephard appealed to this court.

This case, therefore, came before this court neither on the claim or appeal of the alleged owner of the vessel, nor on the claim or appeal of the alleged owner of the cargo, but

on the appeal of persons who had attached—legally or otherwise—the vessel, &c., and cargo, at Newport, as judgment creditors of P. L. Pearce, of New York, by virtue of process of attachment issued out of the Supreme Court of Rhode Island against Pearce.

The facts on which their claim arose, as derived from a full and accurate printed statement prepared by Mr. Coffey, late Assistant Attorney-General, and now special counsel of the United States in the matter, were essentially as follow:

The bark, then on a voyage *somewhere*, was forced by weather, as already mentioned, into Newport, July 11th, 1861.

On the 27th of June, 1861, Pearce, of New York, confessed judgment to H. P. Booth, in the Supreme Court, City and County of New York, for $11,128.56.

On the 19th of July, 1861, after the arrival of the bark at Newport, Ward, Shephard, and Booth, partners, trading as Ward & Co., of New York, the appellants in this case, issued a writ out of the Supreme Court of Rhode Island, at Newport, against Pearce, also of New York, for his arrest, and, for want of his body, for the attachment of his goods, &c., to the value of $500. On the 20th of July, 1861, the sheriff returned that on that day he had attached the bark and cargo, the goods and chattels of Pearce. The account for which this suit was brought was for $300 cash furnished Captain Cunningham, of bark Reindeer, to pay off crew, on 13th July, 1861, and $50 cash to Captain Cunningham, on 15th July, 1861, in all $350, advanced *after* the arrival of the vessel at Newport. On the third day of August Term, 1861, the plaintiffs obtained judgment by default for $350 debt, and costs, taxed at $9.90.

The Reindeer was a vessel of 248 tons, with one deck and three masts, 100 feet long, 35 feet 3 inches broad, and 11 feet deep. She was owned by Pearce, of New York, and was commanded by W. H. Cunningham, of the same place. Pearce was a ship chandler and commission merchant in New York during the winter of 1860–'61, and had the vessel stripped, calked, resheathed, and refitted previous to her

departure on a projected voyage. She was also built with a rider,—an arrangement for laying an extra deck. Pearce employed J. E. Ward & Co., of New York (the claimants in this case, by virtue of their attachment of the vessel and cargo as above stated), to advertise and despatch her. Under these auspices she cleared and sailed for Havana on the 26th of January, 1861, where she arrived about the 20th of February following, consigned to Perez & Martinez, of that place.

J. E. Ward & Co. shipped on her to Havana, among other things, 14,700 lbs. of *tasajo*, or dried beef, and a box of hardware. Her outward manifest exhibited, besides, twenty-two packages of hardware.

The shipping articles, signed at New York, dated 26th of January, 1861, described the bark Reindeer as "now bound from the port of New York to one or more ports in Cuba; from thence to one or more ports in Europe, *if required*, and back to a port of discharge in the United States, or from Cuba back to the United States." The crew-list appended showed the captain, two mates, and seven men, of whom four deserted in Cuba, whose places were there filled. The captain and the rest of the crew remained all the time with the vessel, and were on her when she arrived at Newport.

The four sailors shipped in Cuba were shipped "to go a voyage to Falmouth, from thence to one or more ports of Europe, and back to a port of discharge in the United States."

Pearce, the owner of the vessel, arrived in Havana about the middle of March, and remained there until the 6th of May following.

The history of the vessel at Havana was thus: She laid at Havana from the 20th of February to the 22d of June, 1861. One of the consignees, Martinez, stated that Pearce went there *to sell* the vessel; that he *made a contract* to sell her to Tejedor for $7000, which Tejedor did not carry out; but that on the 10*th of May* Tejedor *chartered* the vessel, by charter-party, from Perez & Martinez, after Pearce had left Havana, for the sum of $8500, of which Tejedor paid $4000. Of this, Martinez testified that $1500 was for detention of the vessel from 23d of March until 10th of May. A charter-

party was produced, dated 23*d March*, 1861, signed by Captain Cunningham, "on behalf of P. L. Pearce, owner of the said vessel, and Perez & Martinez, *according to instructions handed to them by said owners*," chartering the vessel to Gregorio Tejedor for three years, for which Cunningham acknowledges "to have received this day from Gregorio Tejedor" $8500, giving Tejedor exclusive disposal of vessel, master, and crew, and right to place his own supercargo on board, he to bear all expenses and pay repairs.

On the 22d of June, 1861, the Reindeer cleared at Havana "for Falmouth, England, and for orders."

Having set sail from Havana on that day, the captain, in his protest, swore, "that on Tuesday, the 2d day of July, 1861, at sea, in about latitude 31°, longitude 69°, during a squall, the ship was caught aback, and, having gained sternway, wrenched the rudder-head and carried away the foreyard, when, finding the ship unfit to perform the voyage, squared away for Newport, Rhode Island, where we arrived July 11."

The location of the vessel, as above stated, when the captain was thus compelled to put into Newport, showed her, according to Maury's Geography of the Sea,* to have been on the route to the west coast of Africa.

On the day after her arrival at Newport, the captain borrowed of T. & J. Coggeshall $30 to pay the crew; on the 15th July, $60, and on the 18th, $50, for the same purpose; making a bill, with other advances, of $186.83. The crew were then discharged, and all disappeared, none of them being produced as witnesses by claimant, or otherwise accounted for. The captain drew a sight draft on Pearce, to reimburse T. & J. Coggeshall, *which Pearce paid.*

On the arrival of the vessel at Newport, Pearce wrote the captain (23d July, 1861), directing the bills of lading to be forwarded to him; and he paid the wages and expenses of the voyage.

Martinez testified that on her arrival at Havana, 20th of

* Plate VIII.

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February, 1861, all her cargo from New York was delivered. He also says his house (Perez & Martinez) loaded her afterwards for Tejedor; that everything was put on board with permits from the custom-house; that he got the permits himself from the custom-house in every instance; and that he was on the wharf when the goods were shipped to the vessel in the lighter, and saw every package put on board.

The list of cargo taken from the vessel showed a quantity of articles *not on the manifest.* These were casks of high-colored paint, pickled fish, coarse salt, two barrels of lime, and four jars of chloride of lime, cases of medicines, medicinal herbs and lint, coarse sponges, one demijohn of disinfecting fluid, sixty-five water-pipes, part full and part empty, which appeared to have been used as *fresh*-water pipes, and a quantity of flag matting.

Her *manifested* cargo was of 117 pipes of rum, 65 half pipes of rum, 16 pipes of biscuit, 8740 lbs. of *tasajo*, or dried beef, a large quantity of which she had brought from New York, one box of hardware, and 19 packages of the same, wine, brandy, gin, candles, cigars, and 200 oars. Part of the cargo consisted of casks and packages of saucepans, cooking-pans with covers, iron spoons, thirty mess or camp-kettles, three casks, each containing iron chains from $\frac{1}{4}$ to $\frac{3}{8}$ of an inch in diameter, of such length that one or two chains occupied a cask, padlocks, and *machats*, or war-knives. On the ship's manifest these were described as "one bale hardware," "nineteen packages hardware."

The marshal of the United States, Sanford, found on board the vessel, when he seized her at Newport, a package purporting to be a sealed letter, containing several papers, among them a paper issued from the custom-house at Havana upon what is called a "sea letter;" a letter used for the protection of vessels against the examination of a man-of-war at sea, not to be opened by the captain, but only by an officer of the customs, or an officer of a man-of-war. This "sea letter," dated 22d of June, 1861, the day of the bark's departure from Havana, declared the destination of the Reindeer to be St. Antonio. St. Antonio is an unimportant

island in the Cape de Verd Group, in a line from Havana to the western coast of Africa. The other papers were custom-house permits for embarking certain articles on the vessel, one dated 22d of May, and the other 19th of June. Both declared her to be bound for St. Antonio, and both were obtained by Perez & Martinez, who loaded the vessel for Tejedor.

The manifest of cargo from Havana to Falmouth reported "two passengers, cabin," Don Pedro Garcia and Don H. A. Pinto. These persons came with the vessel to Newport. Garcia had been captain of a coasting vessel in Cuba, and said that he had been to the coast of Africa after slaves, but was now a passenger. Pinto first said that he was on board as supercargo, which he afterwards repeated; but after he was arrested and put in jail, he denied that he was anything but a passenger.

Mr. Gillet, for the appellant: We admit that Tejedor, by not appealing, acquiesced in the decision of the Circuit Court, and that *his* claims must be laid out of view on this hearing. He conceded, so far as the present appellants are concerned, that the vessel and cargo belonged to Pearce, and was lawfully attached, and that he has no claim upon either.

The questions are, therefore, now between the United States, claiming through the marshal's seizure under the libel, and that of the sheriff and creditors upon their prior seizure under the attachments.

1. We contend upon these that there was no sufficient evidence to show a fitting out, &c., of the vessel in New York. Whatever fitting out and clearance there was by any one for any place, was at Havana by Perez & Martinez for Tejedor, a Spanish subject, residing at Havana. It is not even certain that the voyage was for the slave-trade at all. The history of objects and motives in Cuba is not well proved. [The counsel here exfoliated and enforced these views, commenting on and interpreting, as he conceived it, the evidence.]

2. The vessel and cargo were in possession of the State

Court of Rhode Island, and that court had a right to retain the custody. The principle that the court, whose process first seizes property, cannot be interfered with by another jurisdiction, was settled by *Taylor* v. *Carryl* in this court.* For this reason there is no jurisdiction.

3. The offence, such as it is, so far as Pearce is concerned, is charged to have been committed in New York. Yet the vessel is seized in Rhode Island, where no offence is committed at all, nor is alleged to have been. Jurisdiction fails here, too.

Mr. Coffey, special counsel of the United States, contra: No doubt, Havana was the place where most of the fitting out was done. This, however, was to evade detection. The voyage was begun in New York. Much of that same "14,700 pounds of *tasajo*," or dried beef, that same "box," and those same, or very nearly those same "twenty-two packages of hardware," which were shipped *to* Havana from New York, were found on the vessel at Newport, and after they had been shipped from Havana to some other place; *what* other place we shall consider directly. Further than that, the same sailors (four excepted), who left New York January 26, 1861, for Havana, are found on board at Newport (on July 11th), after the voyage to Havana had been ended, and the vessel at rest there for four months. This shows the continuity of the voyage.

To what place was this voyage? Maury's Geography of the Sea shows that the vessel was in the direct course to Africa when compelled to put into Newport. The cargo was all of it suited to the slave-trade. Much of it was scarce suited to anything else. Machats, or war-knives, innocently described as "hardware;" "sponges," an article used to wash slaves after being packed under the hatches; "vinegar," given to them to rinse their mouths; "medicines," for these poor beings; disinfecting fluids, chloride of lime, mess-kettles, casks of *long* iron chains, with padlocks, as indicative

* 20 Howard, 583.

of the purpose of the voyage as manacles or handcuffs would be, are for the slave-trade specially. How can such articles be vindicated as a *cargo to Falmouth*, England, especially as coming from Cuba? *Tasajo* is imported from Buenos Ayres, and is a food specially for slaves. St. Antonio was more truly described as a destination, since it was in the direct line of the true destination; but it was not itself that destination. St. Antonio is a poor port of the Cape de Verds; insignificant and insecure at once; a place for which such a cargo would have been wholly too large, and as much unsuited. The extent of the repairs show a long voyage. Garcia and Pinto, though entered as passengers, confessed that they were not so; though they afterwards tried to lie themselves out of the confession, when the vessel was seized. Undoubtedly they were managers of the voyage.

The charter-party was a fraud. The testimony of Martinez brought to sustain it, shows that Tejedor paid $1500 more for the use of the vessel for three years, than Pearce asked for the whole title; and nearly three times as much as the vessel brought when sold at Newport. Martinez testifies that Pearce "made a contract to *sell* her to Tejedor." No doubt this was the scheme; but when the vessel was compelled to put into Rhode Island, and was *seized*, it became plain that this plan would not stand; a sale being a nearly invariable badge of a slaver voyage. A charter-party was resorted to, and an *attachment by creditors*.

It is not worth while to discuss the law of priority between State and Federal liens; for the marshal of the United States took the vessel as soon as she entered Newport; and,

2. The attachment, as we have signified, is as much fraudulent as every other part of the scheme. The case comes here confessedly on the appeal of the attaching creditors. The attachment was for a sum of $350, and $9.90 costs. Is it to vindicate a right to *this* sum that an appeal is taken from the Circuit Court of Rhode Island to this high tribunal? that counsel are made to wait the "law's delay," for half a winter in the Federal metropolis? Will counsel assert this? Pearce was plainly *owner*.

But if the attachment were not fraudulent, the United States would have priority; for a forfeiture made absolute by statute, relates back to the time of the commission of the offence. This is ancient and settled law.*

It is settled as well, that the district where the seizure is made has jurisdiction of a proceeding *in rem.*†

Mr. Justice CLIFFORD delivered the opinion of the court.

This is an appeal from a decree of the Circuit Court of the United States for the District of Rhode Island, in a cause of seizure and forfeiture.

The libel of information against the bark Reindeer and her cargo, was filed in the District Court on the seventh day of August, 1861, and the transcript shows that it contains twenty counts, founded upon various provisions contained in the several acts of Congress, prohibiting the slave-trade. But the material charges to be considered in this investigation are the following:

1. That the vessel was, on the twenty-sixth day of January, 1861, by some person, being a citizen of the United States, or residing within the same, for himself or for some other person, either as master, factor or owner, fitted, equipped, and prepared within the port of New York, for the purpose of carrying on trade or traffic in slaves to some foreign country, or for the purpose of procuring from some foreign kingdom, place or country, the inhabitants thereof to be transported to some foreign country, port or place, to be sold and disposed of as slaves.

2. That the vessel being owned by a citizen of the United States, was by him at the time aforesaid, for himself as owner, fitted, equipped, loaded, and prepared in the port of New York, for the purpose of procuring negroes, mulattoes, or persons of color, from some foreign kingdom, place, or country, to be transported to some other port or place, to be

* Roberts *v.* Wetherall, 1 Salkeld, 223; S. C., 12 Modern, 92; United States *v.* Grundy, 3 Cranch, 338; Gelson *v.* Hoyt, 3 Wheaton, 246.

† United States *v.* The Betsy, 4 Cranch, 452.

held, sold, or otherwise disposed of as slaves, contrary to the form of the statute in such case made and provided.*

Process was forthwith issued and duly served on the same day, and on the twenty-eighth day of the same month, Gregorio Tejedor appeared as claimant. Referring to the claim as exhibited in the record, it will be seen that he averred under oath that he was the true and *bonâ fide* owner of the cargo and the charterer of the vessel, and the record also shows that he was allowed to make defence. Claim was also duly filed by the appellants. They allege in substance and effect, that the vessel was owned by one Pierre L. Pearce, and they base their claim to the vessel and cargo upon the ground that the first-named appellant, as the sheriff of the county of Newport, held the same, at the time of the seizure by the marshal, under certain writs of attachment issued in favor of the other appellants against the owner of the vessel from the State court, and consequently, they insist that the District Court had no jurisdiction of the case.

No claim was ever filed by the owner of the vessel or by any other person in his behalf. Testimony was taken on both sides in the District Court, and after the hearing, a decree was entered condemning both the vessel and cargo as forfeited to the United States. Claimant of the cargo and the present appellants appealed to the Circuit Court of the United States for that district.

Subsequently, they were heard in the Circuit Court upon the same evidence, and after the hearing, a decree was entered affirming the decree of the District Court. Whereupon, the claimants under the attachment suits appealed to this court, and now seek to reverse the decree, upon the ground that the possession of the sheriff was prior to that of the marshal, and that such prior possession has the effect to defeat the jurisdiction of the Federal courts.

I.—1. Parties who have not appealed, are not entitled to be heard in this court, except in support of the decree in the

* 1 Stat. at Large, 347; 3 Id. 451.

court below. They cannot ask for a reversal in the appellate court, and consequently the only questions really before the court are those presented by the appellants as attaching creditors of the owner of the vessel. Appeal not having been taken by the claimant of the cargo, he must be understood as having acquiesced in the correctness of the decree entered by the Circuit Court; and it has already been stated that the owner of the vessel never made any claim. Remark should be made, that during the hearing in the District Court, the Vice-consul of the Queen of Spain, resident at Boston, professing to intervene "for the Government of her Catholic Majesty," filed a claim for the vessel and cargo as the property of Gregorio Tejedor, but it does not appear that the claim was ever prosecuted, and inasmuch as no appeal was taken, either to the Circuit Court or to this court, it is unnecessary to comment further upon that subject.

2. Appellants allege that Pierre L. Pearce, of the city of New York, was the owner of the vessel, and the proofs fully sustain the allegation. Proofs also show that the bark was a vessel of two hundred and forty-eight tons, with one deck and three masts. Her register shows that she was a hundred feet in length, and thirty-five feet in breadth, and that she was eleven feet in depth; and the proofs also show that her construction and arrangement were well suited for the illegal traffic in which it is alleged she was engaged. Prior to the sailing of the vessel, she was placed on the dry-dock and calked, resheathed, and otherwise repaired and fitted for the projected voyage. After being fully repaired, she was advertised for a voyage to Havana by James E. Ward & Co., shipping and commission merchants, acting as the agents of the owner. Under these auspices she cleared from the port of New York, and sailed for Havana, on the twenty-sixth day of January, 1861, where she arrived on the twentieth of February following.

Her shipping articles describe the voyage as one from the port of New York to one or more ports in Cuba, from thence to one or more ports in Europe, *if required*, and back to a port of discharge in the United States, or from Cuba back

to the United States. Ship's company, as appears by the crew-list, consisted of the master, William H. Cunningham, two mates and seven seamen, all of whom were on board at the time of the seizure, except four of the seamen who deserted in Cuba, and whose places were immediately supplied by the master. They were shipped for a voyage from Havana to Falmouth, from thence to one or more ports of Europe and back to a port of discharge in the United States.

Counsel of the United States contend that the vessel was evidently fitted, equipped, and otherwise prepared and caused to sail from the port of New York to Havana, with the ultimate purpose that she should proceed to the west coast of Africa to engage in the slave-trade. As supporting that theory, they refer to the construction and arrangement of the vessel, and to the fact that the crew were shipped not for Havana, but for a voyage from New York to one or more ports in Cuba, and from thence to one or more ports in Europe, and back to a port of discharge in the United States, or from Cuba back to the United States; and they also refer to the repairs put upon the ship, as tending to show that she was intended for a long voyage.

Reference is also made to the fact that the owner, although in the shipping business himself, employed J. E. Ward & Co. to put the vessel up, and also to the fact that they advertised and despatched her as his agents. They shipped part of the cargo, and the manifest shows that their shipment included one box and twenty-two packages of hardware, and fourteen thousand seven hundred pounds of *tasajo*, or dried beef, which it is proved comes from Buenos Ayres, and is not an article of shipment from New York to Havana, but is an article imported into Cuba from South America, and is largely used for feeding negroes.

The vessel laid at Havana over four months before she received her cargo. She was consigned to the house of Perez & Martinez, and the latter testifies that all her cargo from New York was duly unladen and delivered. During all that time the master and the crew remained on board, drawing full wages, except the four who deserted, and their

places were immediately supplied. Pearce, the owner of the vessel, arrived at Havana on the fifth of March, 1861, and the proofs show that he remained there until the sixth day of May following.

3. Theory of the claimant of the cargo in the court below, was that the owner went there to sell the vessel, and that he actually made a contract to sell her to the claimant for the sum of seven thousand dollars, which was not carried into effect; that the claimant failing to make the purchase, subsequently chartered the vessel for the term of three years, for the sum of eight thousand five hundred dollars. He produced a charter-party, which is to that effect, bearing date on the twenty-third day of March, 1861, executed while the vessel was laying at Havana.

Expenses for repairs, wages of the master and crew, and expenses for provisions and all other expenses, were to be borne by the charterer, but there was no change in the shipping articles, or in the crew-list, or in any of the ship's papers. On the contrary, the voyage went on as it was begun at New York, and the same officers and crew remained on board till the vessel was seized as hereinafter explained. One of the consignees of the vessel testifies that his firm, Perez & Martinez, afterwards loaded the vessel for the alleged charterer, and he states that the entire cargo was put on board under permits from the custom-house, but the list of the cargo taken from the vessel, shows that a large quantity of articles, specially suited to the slave-trade, were not on the manifest, and consequently it is highly improbable that they were put on board under the sanction of public authority.

Articles not on the manifest embrace sixty-five water-pipes, casks of high-colored paint, pickled fish, coarse salt, two barrels of lime, four jars of chloride of lime, cases of medicines, medicinal herbs and lint, coarse sponges, and one demijohn of disinfecting fluid. Her manifested cargo, also, is of the same criminating character. Among the articles are, one hundred and seventeen pipes of rum, and sixty-five half pipes, sixteen pipes of biscuit, eight thousand seven hundred

and forty pounds of *tasajo*, and one bale and nineteen packages of hardware, besides wine, brandy, gin, and two hundred oars. Part of the cargo, innocently described in the manifest as hardware, consisted of saucepans, cooking-pans, casks containing iron chains, padlocks, and war-knives.

All of these articles are proved to be used in the slave-trade, and it is difficult to resist the conclusion, that they were all exported from the port of New York.

On the 22d day of June, 1861, the vessel cleared at Havana for Falmouth, England, and for orders. Protest of the master, dated at Newport, R. I., on the 12th day of July, 1861, states, "that on Tuesday, the second day of that month, at sea, in about latitude thirty one degrees, longitude sixty-nine degrees, during a squall, the ship was caught aback, and having gained sternway, wrenched the rudderhead and carried away the foreyard, when, finding the ship unfit to perform the voyage, squared away for Newport," where the vessel arrived on the eleventh of the same month.

Suggestion on the part of the United States is, that the location of the vessel, as described in the protest at the time when she was obliged to abandon the voyage and sail for a port of refuge, shows that she was on the direct route to the coast of Africa; and it must be admitted that there is great force in the suggestion.

4. Libellants deny that the charter is a *bonâ fide* instrument, and as showing that it cannot be so regarded, they refer to the fact that the alleged charterer agreed to give fifteen hundred dollars more for the charter than the owner asked for a full title of the vessel. Theory of the libellants is that the whole transaction is a simulated one, and that the charter was manufactured to conceal the real fact that the owner had sent his vessel to Havana for the purpose of completing her fitment for the contemplated slave-trading voyage. They insist that his original design was to set up the theory of a sale, but that he was obliged to abandon that theory, lest he should destroy the claim of the appellants under their attachments.

Support to the theory that the charter-party is not a *bonâ*

fide instrument is certainly derived from the evidence in the case, that fourteen packages of stores for the vessel were shipped at New York, on the 10th of May, 1861, by the order of the owner, and consigned to the master. None of the packages were manifested, and the directions were that they should not be, and they were not landed at Havana, but were transhipped directly on board the Reindeer. Strong confirmation of that theory is also derived from the subsequent conduct of the owner after the seizure of the vessel. Irrespective of any or all previous theories, he at once, on the arrival of the vessel at Newport, assumed to treat the vessel and cargo and the whole enterprise as his own, as appears by his letter to the master, and by his conduct in the payment of the wages and expenses of the voyage.

When the vessel was seized, there was found on board by the marshal a sealed package, containing what is called by the witnesses a sea letter. Such a letter is designed, as represented by one of the witnesses, for the protection of the vessel in case she should be boarded by an officer of the customs, or an officer of a man-of-war. This sea letter was dated the 22d day of June, 1861, and stated that the destination of the vessel was not to Falmouth but to St. Antonio, one of the Cape de Verd islands, and the custom-house permits found on board contained the same representation.

On the other hand, the voyage in the manifest is described as one from Havana to Falmouth, and it reports two "passengers, cabin, Pedro Garcia and Hato A. Pinto." They were on board the vessel at the time of the seizure, and the one first named admitted that he had once been to the coast of Africa for slaves, but insisted that he was a mere passenger. Pinto at first admitted that he was supercargo; but afterwards, when he was arrested, denied that he was anything but a passenger. Neither of these persons was produced as a witness by the claimants, and no satisfactory explanation is given why they were not called.

Claimants not only failed to call either of the supposed passengers who were on board, but they have neglected to call the master or any one of the crew, and the evidence

shows that the master has absconded. They have introduced no one who knew what the real destination of the vessel was except one of the consignees, and his testimony is unsatisfactory, and, in many respects, utterly incredible.

5. Unusual as was the conduct of the owner of the vessel, in omitting to present any claim for the same, it was even more so in the course adopted by him to enable the attaching creditors to obtain judgment against him for a debt contracted only four days before he was sued. On the day after the arrival of the vessel, the master borrowed thirty dollars of Messrs. T. & J. Coggeshall to pay the crew; and on the fifteenth of July following, he borrowed of the same parties the sum of eighty dollars; and on the eighteenth of the same month the further sum of fifty dollars for the same purpose. He paid the crew, and they were discharged; and thereupon he drew a sight-draft on the owner to reimburse the lenders, and the amount was promptly paid. Attaching creditors, James E. Ward & Co., sued out a writ of attachment against the owner of the vessel, on the 19th day of July, 1861, alleging the damages in the sum of five hundred dollars; but the amount for which the suit was brought is only for the sum of three hundred and fifty dollars, and consists of two items, one dated July the thirteenth, and the other July the fifteenth, and both are for cash advanced to the master of the vessel to pay off the crew.

Plaintiffs in that suit, it will be remembered, were the agents of the owner in putting up and despatching the vessel at the inception of the voyage, and they were the shippers of the hardware and the *tasajo*, as appears by the manifest. Return was made upon the attachment suit on the 20th day of July, 1861, and the proofs show that the defendant in the suit refused to allow counsel to continue the case, and consented that the plaintiffs should have judgment. Taken as a whole, the circumstances attending that suit and its prosecution afford strong grounds to infer that the purpose of the suit was to furnish the means of defeating the jurisdiction of the District Court.

Both the District and the Circuit Courts were of the

opinion, that the facts and circumstances to which reference has been made afford a clear presumption that the allegations of the libel are true, and in that view of the case we entirely concur. Doubt cannot be entertained that the evidence of guilty purpose, from the inception of the voyage to the time when the vessel was compelled by stress of weather to sail for Newport, is abundantly sufficient to overcome every presumption of innocence to which any such voyage can be entitled, and to establish the truth of the charges under consideration as contained in the libel.

Suits of this description necessarily give rise to a wide range of investigation, for the reason, that the purpose of the voyage is directly involved in the issue. Experience shows that positive proof in such cases is not generally to be expected, and for that reason among others the law allows a resort to circumstances as the means of ascertaining the truth. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof. Applying that rule to the present case, we have no hesitation in coming to the conclusion that the finding in the court below was correct.

II. Appellants contend, in the second place, that the District Court had no jurisdiction of the case. 1. Because the vessel and cargo, as they insist, were in the custody of an officer of a State court at the time the monition was served by the marshal. 2. Because the wrongful acts, if committed at all, were committed in the District of New York, and not in the district where the libel was filed.

Three answers are made by the United States to the first objection to the jurisdiction of the court.

First. They deny the fact, that either the vessel or cargo was ever in the exclusive possession of the officer of the State court.

Secondly. They insist that the attachment suit was a collusive one between the appellants and the owner of the vessel, and that the same was only prosecuted as the means of defeating the jurisdiction of the Federal courts.

Thirdly. They contend that the possession of the sheriff under civil process from a State court, as supposed by the appellants, will not prevent the operation of the laws of the United States in suits of forfeiture, or oust the admiralty jurisdiction of the Federal courts in a case like the present, where the forfeiture is made absolute by statute, because in such a case the forfeiture relates back to the time of the commission of the wrongful acts, and takes date therefrom, and not from the date of the decree.

1. Undoubtedly it was decided by this court in the case of *Taylor et al.* v. *Carryl*,* that where a vessel had been seized under a process of foreign attachment issuing from a State court, the marshal, under process from the admiralty, issued from the District Court of the United States, in a libel for seamen's wages, could not take the property out of the custody of the sheriff; but in that case the sheriff had the prior and exclusive possession of the property.

The undisputed facts, however, in this case are otherwise. Immediately on the arrival of the vessel at Newport the collector placed a custom-house officer on board of her, and that officer was in the actual possession of the vessel and cargo when the attachment was made. Both vessel and cargo were then in the custody of the United States, and so in fact remained until the same were sold by the marshal by the order of the Circuit Court. By order of the district attorney, the collector, some days before the libel was filed, made a formal seizure of the vessel for a violation of the slave-trade acts; and at that time the revenue officer who had taken possession of the vessel before she was attached, still had her in custody, and he remained in possession of her until the sale, when the proceeds were paid into the registry of the court. Under these circumstances it is clear, we think, that the case of *Taylor et al.* v. *Carryl* does not apply, and that the seizure was rightfully made.

2. Our conclusion also is, from the evidence, that the suit of the appellants was a collusive one; and upon that ground,

* 20 Howard, 583.

also we are inclined to hold that the objection of the appellants must be overruled. Having come to that conclusion, it is unnecessary to examine the third answer presented by the United States to this objection.

III. Remaining objection of the appellants to the jurisdiction is, that the wrongful acts, if any, were committed out of the district where the libel was filed. But there is no merit in the objection, as the rule is well settled, that libels *in rem* may be prosecuted in any district where the property is found. Such was the rule laid down by this court in the case of *The Propeller Commerce*;* and it is clear, beyond controversy, that the present case is governed by the rule there laid down.

The decree of the Circuit Court is therefore

AFFIRMED.

ALBANY BRIDGE CASE.

COLEMAN filed a bill in equity in the Circuit Court for the Northern District of New York, to enjoin the Hudson River Bridge Company from building a bridge over the Hudson River at Albany, under an authority which had been granted by the Legislature of the State of New York. The Circuit Court dismissed the bill. On appeal here the whole matter—as well the general question of the constitutional right of a State to pass a law authorizing the erection of bridges over navigable rivers of the United States, as the more special question, whether the navigation of the Hudson would be practically obstructed by this bridge, as it was proposed to erect the same—was fully and most ably argued by *Mr. Secretary of State Seward, and the Honorable Mr. J. V. L. Pruyn, M. C., in favor of the right to build, and by Messrs. Carlisle and Senator Reverdy Johnson, contra.* But the court being equally divided, no opinion on any point was given, and the decree so stood a

DECREE AFFIRMED OF NECESSITY.†

* 1 Black, 581.

† For the nature and effect of a decree of this sort, see Krebbs *v.* Carlisle Bank, 2 Wallace, Jr. 49, note.