THE SEA LION.

1 Under the act of 13th July, 1861, which forbade all commercial intercourse between the inhabitants of a State whom the President should proclaim in a state of insurrection, and the citizens of the rest of the United States, but by which it was enacted that "the President" might "in his discretion" license and permit intercourse in such articles, &c., "as he in his discretion" might think most conducive to the public interest, and that "such intercourse so far as by him licensed" should be "conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury." *Held*—

(i) That the President alone had the right to license such intercourse.

(ii) That a license from a "Special Agent of the Treasury Department and Acting Collector of Customs" dated 16th February, 1863, to bring cotton "from beyond the United States military lines," though certifying on its face that the United States military commander of the department where the license was given, by order in the "special agent's" hands "approved and directed this policy," *and indorsed "Approved" by the rear admiral commanding that maritime station*, which license declared that cotton brought by particular persons named would "not be interfered with in any manner, and they can ship it direct to any foreign or domestic port"—was no protection to property bearing the stamp of enemy property when captured in coming from a port of a State in insurrection and then under blockade by the government, though in a course of being brought by the particular persons, named in the license.

2. Such a license as that above mentioned had no warrant either from the Treasury regulations of 28th of August, 1861, or from those of 31st March, 1863.

AN act of Congress passed during the late rebellion (July 13th, 1861), prohibited all commercial intercourse between the inhabitants of any State which the President might declare in a state of insurrection, and the citizens of the rest of the United States; and enacted that all merchandise coming from such territory into other parts of the United States with the vessel conveying it should be forfeited.

The act provided, however, that "the *President*" might "in *his* discretion *license and permit commercial intercourse*" with any such part of a State the inhabitants of which had been so declared in a state of insurrection, "in such articles, and for such time, and by such persons, as he, in *his* discretion, may think most conducive to the public interest." And

that "such intercourse, so far as by *him* licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury."

The President having soon after declared several Southern States, and among them Alabama, in a state of insurrection, and the Secretary of the Treasury having issued a series of commercial regulations* on the subject of intercourse with them, Brott, Davis & Shons, a commercial firm of New Orleans, obtained from Mr. G. S. Dennison, special agent of the Treasury Department, and acting collector of customs at New Orleans, a paper, dated February 16th, 1863, as follows:

"The United States military and other authorities at New Orleans permit cotton to be received here from beyond the United States military lines, and such cotton is exempt from seizure or confiscation. An *order is in my hands from Major-General Banks approving and directing this policy.* The only condition imposed is that cotton or other produce must not be bought with specie. All cotton or other produce brought hither from the Confederate lines by Brott, Davis & Shons will not be interfered with in any manner, and they can ship it direct to any foreign or domestic port."

This paper was indorsed by Rear Admiral Farragut, in command of the blockading force on that coast, "*Approved.*" The Rear Admiral had given also the following instructions to his commander of the Mobile blockade:

"Should any vessel come out of Mobile and deliver itself up as the property of a Union man desiring to go to New Orleans, take possession and send it into New Orleans for an investigation of the facts, and if it be shown to be as represented, the vessel will be considered a legal trader, under the general order permitting all cotton and other produce to come to New Orleans."

With the first quoted of these documents in their possession, Brott, Davis & Shons addressed the following commu

* Not set forth in the records or briefs, nor as the case was decided essentially important to be set out.

nication, dated March 9th, 1863, to one Worne; he being at this time a member of the firm of Oliver & Worne, who were engaged in business in New Orleans; Danes by birth:

"All cotton and other produce shipped from within the Confederate lines to our address by yourself, as our agent, will be protected by us under authority from the military and naval authority of this place, dated February 16th, 1863, permitting us to receive such cargoes and to reship them to foreign ports. The original permit alluded to we herewith inclose to you."

On accepting from Brott, Davis & Shons, the agency, Oliver & Worne proceeded to Mobile for the purpose, as such agents, to ship cotton *to some place;* where? was one of the questions raised.

At Mobile Worne transferred his agency to Hohenstein & Co.

These persons, upon assuming the employment passed over to them, bought a schooner, "The Sea Lion," of about ninety tons. And, on the oath of "M. D. Eslava, of Mobile," the vessel was registered under an "act to provide for the regulation of vessels owned in whole or in part by citizens of the Confederate States," as the property of Hohenstein & Co., "the only owners." On this schooner they laded two hundred and seventy bales of cotton. A small shipment (seven barrels) of turpentine was also put on board. They selected for captain a certain Netto, a Spanish subject, born in Mahon, unmarried, for four years previous to 1863 resident in Mobile, but for six years before coming there sailing on Spanish ships; one Yokum (a partner of Hohenstein), originally of the loyal States, but after 1856 of Memphis, Tennessee, being appointed by Oliver & Worne supercargo. The crew, seven in number, were from Mobile, and all Spanish but one, he being English.

The vessel being thus ready for a voyage, Oliver & Worne gave to Yocum, the supercargo, letters of introduction to persons in *New Orleans.*

Statement of the case.

[*Oliver to Brott.*]

May 10th, 1863.

F. BROTT, ESQ.,
Of Brott, Davis & Shons, New Orleans

DEAR SIR: I beg to introduce to your acquaintance Mr. N. Yocum, who visits your city on business. I recommend Mr. Yocum to your best attentions, and trust that you will assist him in his purposes, *which he will explain to you verbally.* Mr. Yocum is the senior of the firm of J. Hohenstein & Co., your agents for cotton shipments.

Trusting that lively business transactions between your respective firms may be the result of your meeting with Mr. Yocum,

I remain truly yours,

OLIVER & W.

[*Same to Pilcher.*]

May 10th, 1863.

MASON PILCHER, ESQ.,
President of Bank of New Orleans.

DEAR SIR: By the present I beg to introduce to your acquaintance Mr. N. Yocum, who visits your city on business. I recommend Mr. Yocum to your best attention, and trust that you wil please to assist him in his purposes, *which he will explain to you verbally.*

OLIVER & W.

[*Worne to Pilcher.*]

May 10th, 1863.

MASON PILCHER, ESQ.

DEAR SIR: The present will be handed to you by Mr. N. Yocum, who takes out some cotton. I would write to you more fully on this subject, but *deem it advisable to let Mr. Yocum explain this transaction to you.*

He intends purchasing a steamer. If the one you had at Havana is still unsold, Mr. Yocum may buy her, if you can recommend her as thoroughly seaworthy, and in every respect in good order. I mentioned to him your price, $40,000 at New Orleans.

Your friend D. is at *Atlanta.* It was absolutely impossible for us to obtain any vessel here. Furthermore, heavy bonds were required to obtain permission to take out cargo, and he deemed it advisable to invest in some favorable enterprise in

Statement of the case.

Georgia,* temporarily, until we could find some opportunity to do so here. He is well and sends his best regards.

Please show your best attentions to Mr. Yocum, and assist him as much as you possibly can. He is under heavy bonds to take his shipment to Havana. *You will, therefore, please to have it immediately released and cleared for that port.*

Please hand the inclosure to address, with my best compliments.

You can rely implicitly on Mr. Yocum in all he says. *It will be done faithfully.*

Truly yours, R. W.

The vessel, however, was not documented at all for New Orleans. The shipping articles, her clearance, bill of health, manifest (sworn to by the captain, Netto), all presented "Havana, Cuba," as the port of destination. And the vice-consul of Spain, in Mobile, certified that the goods in the manifest were the same which had been cleared from the consulate for that port.

The vessel set sail from Mobile in the daytime of the 8th May. When five miles southeast of Fort Morgan, which commands the entrance to Mobile harbor, and at about 12 o'clock, midnight, she was captured and sent to Key West, where she was libelled in the District Court for Southern Florida in prize. She had made no resistance, and all her papers, including the "license," were given up. Among them was this one:

MOBILE, ALA., May 8th, 1863.

N. Yocum has credit on the books of J. Hohenstein & Co., $150,034, and $17,000 subject to settlement between J. Hohenstein and N. Yocum.

J. HOHENSTEIN & Co.

The captain and the supercargo were the only persons examined *in preparatorio*.

1. *As to the port of destination.*

The supercargo said that his directions from Hohenstein & Co. were to drop down to the fleet off Mobile, supposing

* A State at the time in rebellion.—REP.

that the officers of the fleet would assist them to get to the mouth of the Mississippi, where he was to communicate with Hohenstein & Co. He added, that the vessel was dropping down with the tide and did not change her course when taken.

The captain stated that when the vessel was cleared he expected to go to Havana. "After passing Fort Morgan the supercargo, Mr. Yocum, said we would go to the mouth of the Mississippi to go to New Orleans. I should have taken her wherever the supercargo said."

These two persons, the captain and supercargo, on the next day filed a claim for the vessel in behalf of *Brott, Davis & Shons*, swearing that the vessel was bound in good faith to the port of New Orleans, there to deliver her cargo in pursuance of the license of G. S. Denison, special agent of the Treasury Department.

Brott & Davis also made joint affidavit as "*claimants* of the schooner Sea Lion and of the cargo laden and found on said schooner." It was read in evidence, by consent:

"That on the 16th February, 1863, they obtained from G. S. Denison, Esq., special agent of the Treasury Department, and acting collector of customs at New Orleans, a license to bring cotton and other produce from beyond the military lines of the United States, and from within the Confederate lines, into the port of New Orleans; that the said license was approved by D. G. Farragut, Rear Admiral; that thereupon the agents of these respondents, Messrs. Oliver & Worne, in Mobile, Alabama, acting on behalf of these respondents, loaded the schooner; that in the latter part of March, 1863, the said agents proceeded from New Orleans to Mobile for the purpose of shipping the said cargo, and were furnished with the license from Collector Denison and Admiral Farragut, which was placed in the hands of Mr. N. Yocum, who went on board the said schooner as supercargo, and express instructions were given by claimants to their agents to bring the said schooner, with her cargo, to this port of New Orleans; that it always was their design and intention to cause said schooner and her cargo to be brought to New Orleans and not to be taken to any other place whatsoever; and that it was their intention to ship the said cargo from this port

according to law, to the best market. And they further depose that each and every member of the firm of Brott, Davis & Shons, is a loyal citizen of the United States, and that *no enemy of the United States* has any property or interest in the said schooner and cargo."

Hubbell, also, the passenger, whose affidavit was received by consent, stated:

"That although the schooner was cleared for Havana as a necessity, and in blind, in order to get out of the port of Mobile, he understood she was going to New Orleans, and that he was bound for and expected to go to New Orleans, and that he was told by the supercargo of the said Sea Lion that it was his intention when off the bar to lay alongside of the blockading fleet in order to obtain a permit to come to New Orleans; that the said schooner came out of the 'swash channel,' and that when over the bar, instead of following the channel down the coast, as is the usual custom of blockade-runners, she stood out for the blockading fleet to obtain the beforementioned permit; that as evidence of the intention of the supercargo to place the said schooner in the hands of the blockading fleet, he took her out when the wind was very light, so that she was not able to sail over two knots an hour, and that it was with difficulty he induced the pilot to take her out with such a wind; that the schooner hove to on hearing the first gun from the blockading fleet, and awaited being captured."

2. *As to the ownership of the vessel and cargo.*

In the claim to the vessel, interposed by the captain and supercargo, Netto and Yocum, both captain and supercargo swore that, as they were "*informed and believed*," the vessel and cargo were the property of Brott, Davis & Shons, and that no enemy of the United States had any property or interest therein; and on the examination in preparation the supercargo said:

"I believe that Oliver & Worne and Brott, Davis & Shons, are owners of the schooner. I only know them to be owners by their own representations and by their having the management of her. I believe they own the cargo. The spirits of turpen-

tine belonged to the crew. I have no interest. I was to receive $500 as supercargo."

On the same examination the captain said:

"The cotton, I think, belonged to Brott, Davis & Shons. The supercargo told me it so belonged. I did not know anything more about its ownership. It was to be delivered wherever the supercargo said."

A certificate from the military governor of Louisiana, read by consent, stated that the firm of Brott, Davis & Co. were well known to him "as *unconditionally loyal.*"

The District Court condemned the vessel.

Messrs. W. M. Evarts and Henry Flanders, for the claimants, appellants in the case:

I. *As to the facts.*

The evidence establishes, we submit—

1. That the cargo and vessel were the property of loyal citizens of the United States.

2. That the voyage was authorized by the civil and naval authorities of the United States, and was undertaken solely with the view of giving up the vessel and cargo to the blockading fleet, in accordance with such authorization.

3. That the permit in favor of the claimants was employed in good faith.

The evidence as meant apparently to be relied on in support of the decree below, points to two matters only as giving the case a bad aspect.

1. An argument will perhaps be made against the claimants from the documented character of the vessel. But Worne, acting for Brott, Davis & Co., necessarily employed as agents, such persons as could be useful in the business about which they were employed. Embarked in a transaction such as this was, "compelled," in the language of Lord Stowell, applied to persons similarly situated, "to pick their way in fear and silence," walking, as it were, at every step, over burning ploughshares, these agents had necessarily to

employ great caution and a certain amount of subterfuge. "This," said Lord Stowell, in a case like this,* "is not very much matter of surprise or of serious judicial animadversion." They were obliged, *in order to accomplish their agency*, to deceive the enemy. That, of course. If they had avowed their purpose, proclaimed that the vessel and cargo were the property of loyal citizens of the United States, and documented the vessel in accordance with the facts, it is easy to perceive that both agents and agency would have been strangled in the outset. The master and crew believed that they were destined on a voyage to Havana; the Confederate military and civil authorities believed the same thing. On that belief alone could the vessel have obtained her clearance. That all this was a deception, and that the real destination was New Orleans, the testimony of Mr. Hubbell, a witness above all question, makes certain.

There is no motive that can be well suggested or conceived that could induce the claimants or their agents to act a part that was not open, fair, and consistent with the main and avowed design. They wished to bring out from Mobile this cargo of cotton, and being authorized to do so, they had no motive to evade the blockade. Their only concern was to get safely past the hostile batteries and place their property under the protection of the blockading fleet. There was no spoliation of papers or cargo, no attempt at resistance or escape; but an open, voluntary surrender.

2. An argument may be attempted from the memorandum as to the $150,034, and from Yocum's letters of introduction.

The former was simply an acknowledgment, on the part of J. Hohenstein & Co., that Yocum had credit on their books for $150,000, subject to settlement between the partners. As to the letters, it is, so far as this case is concerned, of no sort of importance what purposes Mr. Yocum had in view at New Orleans. The letter to Mr. Pilcher relates to Mr. Yocum's business and purposes, and not to the busi-

* The Goede Hoop, Edwards, 327.

ness and purposes of Brott, Davis & Shons. It is true, Mr. Pilcher is informed that Yocum is under heavy bonds to take his shipment to Havana, and he is requested to have it released and cleared for that port. The meaning is easily explained: In order to get this cotton out of Mobile, the civil and military requirements of the port had to be complied with. Among others, a bond had to be given that it should be taken to the asserted port of destination. The letter means to say, that if it should be understood in Mobile that the cargo was taken to New Orleans, and there protected, Yocum's bondsmen would be prosecuted for the penalty. Hence the anxiety for the reshipment of the cotton to Havana.

3. The fact that the departure from Mobile was so timed as to bring the Sea Lion out to sea at *night*, argues nothing against fair purpose. The vessel had, of necessity, to escape under cover of the darkness. Does any one suppose that the civil and naval authorities at Mobile would have permitted her to go out in broad day, in full view of the fleet, and to have thus rendered her capture certain? The attempt to have done so would have disclosed the purpose of the voyage, and have induced the seizure of the vessel and cargo, and death to every person concerned in the transaction.

The conduct, then, of the claimants throughout this transaction, we assume to have been open and fair.

II. *As to the law.*

1. The order of Admiral Farragut to his commander of the Mobile blockade, not to capture vessels and cargoes in the situation of the Sea Lion and cargo, together with his indorsement of the "permit" of the acting collector, were acts incidental to his position, and privileged this vessel and cargo from capture.

In *The Hope*,* where the commander of one squadron gave a license with a view to exempt a ship and cargo from capture by another squadron, Lord Stowell expressly de-

* 1 Dodson, 226.

clared that the admiral on a station has power relative to the ships under his immediate command, and can restrain them from committing acts of hostility; though he said that the commander could not grant a safeguard of this kind beyond the limits of his own station.

Admiral Farragut did not go beyond the limits of his own station, but was acting within them. And he had given explicit orders to the commander of his squadron,—orders which must have been communicated at the time of the seizure in question to every vessel of the squadron,—that property in the predicament of that of the claimants should not be regarded as hostile, but be sent to New Orleans for an examination of the facts. Besides, by indorsing the permit of the acting collector he adopted and made it his own, and every officer of his command was bound to respect and enforce it.

2. Even if the act of Admiral Farragut, in privileging the property of the claimants from capture, was irregular, it by no means follows that such property is condemnable as prize. Where the owners stand clear of any intention of fraud their act is not illegal, although its authorization may have been irregular.

In the *Vrow Barbara*,* the vessel was taken on her voyage from Havre to Hamburg. She had been stopped and examined in going to Havre, and had been informed in effect that she might go there. The master knew of the blockade, but understood it had been relaxed. Lord Stowell restored the property, on the ground that she had been permitted to go in.

In *The Henricus*,* the master had been permitted by one of the blockading fleet to go in with a cargo of coal, and was captured in coming out. The court held that the permission to go in with a cargo included the permission to come out with a cargo: that is to say, a mere inferential permission to bring out a cargo was respected.

In *The Venscab*,* the same principle was applied: "I beg

* Reported in the notes to The Juffrow Maria Schrœder, 3 Robinson, 155.

it may be understood," said Lord Stowell, "that I hold the blockade to have existed generally, though individual ships are entitled to an exemption from penalty, in consequence of the irregular indulgence shown them by the blockading force."

*The Juffrow Maria Schrœder** stood on the same ground, and was decided on the same principle.

In *The Johanna Maria*,† Dr. Lushington, referring to the cases just cited as applicable to the blockade of the Baltic ports, said:

"If it can be shown that any vessel has been permitted improperly to enter or come out, I shall confer the benefit of restoration on a vessel so circumstanced."

He held, too, in accordance with Lord Stowell, and in accordance with universal public law, that such restoration, in consequence of improper or irregular indulgence on the part of a blockading force, or in consequence of a more regular and formal license, did not have the effect to vitiate a blockade.

Further: The order of General Banks, approved and adopted by Admiral Farragut, was a legitimate exercise of their authority. In granting these special licenses, they had in view only public objects; they sought to obtain possession of an article which, by the policy of the hostile government, had become contraband of war, an article which this court, in Mrs. Alexander's case,‡ held liable to capture from its peculiar character and the position given it by hostile legislation. "It is well known," said the Chief Justice, in delivering the opinion of the court in that case, "that cotton has constituted the chief reliance of the rebels for means to purchase the munitions of war in Europe. It is matter of history that, rather than to permit it to come into possession of the National troops, the rebel government has everywhere devoted it, however owned, to destruction. The

* 3 Robinson, 155.

† Deane on the Law of Blockade, 86, 115.

‡ 2 Wallace, 404.

value of that destroyed at New Orleans, just before its capture, has been estimated at $80,000,000. The rebels regard it as one of their main sinews of war, and no principle of equity or just policy required, when the National occupation was itself precarious, that it should be spared from capture, and allowed to remain in case of the withdrawal of the Union troops an element of strength to the rebellion."

It was this peculiar property, this element of power and strength, this support of the Confederate treasury at home and abroad, that the military commanders sought to withdraw from the control of the enemy and subject to the control of the government. It was a means of coercing the hostile power; an operation of war under the guise of trade. It will not be denied that General Banks could organize military expeditions to capture this property, so important to the enemy and so important to us also. Could he not accomplish the same object by calling to his aid traders, who, under the stimulus of gain, would penetrate the hostile territory and bring out this support of the hostile existence? General Banks and Admiral Farragut were not thinking of commercial intercourse, but of crippling the enemy, and depriving him of his chief resource and main reliance. They were acting and prosecuting the war in one of the modes which, in the exercise of the large discretion incident to their position, they were entitled to select. They did not authorize general trade, general commercial intercourse irrespective of time or place or commodity (that to which neutrals might have objected); but what may be called a belligerent trade in its objects and purposes, limited to a particular article, and that everywhere within the hostile territory liable to capture.

Mr. Ashton, Assistant Attorney-General, and Mr. Cushing, contra.

Mr. Justice SWAYNE delivered the opinion of the court.

The vessel and cargo were captured and condemned as

prize of war. The appellants seek to reverse the decree upon the ground that both were protected by a license. The validity and effect of the alleged license is the main question to be considered. Before proceeding to examine that subject, there are several other features of the case which invite remark and must not be passed by in silence.

The vessel was fitted out and loaded at Mobile, which was then enemy territory, and in a state of stringent blockade. The cargo consisted of two hundred and seventy-two bales of cotton, and seven barrels of turpentine. She left Mobile on the 8th of May, 1863, under the Confederate flag. She had no other. About 12 o'clock in the night of the 9th of May, and about four miles southeast from Fort Morgan, she was discovered, fired upon, stopped, seized, and sent to Key West, where the decree of condemnation was subsequently pronounced.

Netto was her captain, and Yocum the supercargo. There were on board, besides them, a crew of seven men and two passengers. Certain papers were found which passed into the hands of the captors, and to which it is proper to advert.

The ship's register set forth that it had been sworn by M. D. Eslava, that Yocum & Hohenstein, a firm in Mobile, under the name of J. Hohenstein & Co., were the sole owners of the vessel. The shipping articles engaged the crew to navigate the vessel from Mobile to Havana. The manifest sworn to by Netto, stated that the cargo was intended to be conveyed to that port. The Spanish consul certified that the goods named in the manifest, were on board and destined for Havana. The clearance, signed by the deputy collector, was for the same place. A letter from Oliver & Worne introduced Yocum to Brott, Davis & Shons, of New Orleans, and expressed the hope that lively business transactions between the two houses would follow. Another letter from the same firm to Pilcher, the President of the Bank of New Orleans, asked him to aid in Yocum's business, which it was said Yocum would explain to him. A memorandum, signed by Hohenstein & Co., stated that Yocum

had credit on their books for $150,000, and for $17,000, subject to a settlement between him and Hohenstein. The paper, relied upon as a license, was also found on board, and delivered over by Yocum to the captors. After the vessel was libelled, a claim was interposed by Netto and Yocum in behalf of Brott, Davis & Shons. It is under oath, and states that they believe the vessel and cargo are the property of that firm. Yocum states that he was put in charge of the cargo by one Worne, whom he believes to be a partner of Brott, Davis & Shons. They further say that the vessel was bound in good faith to New Orleans, there to deliver her cargo in pursuance of the license.

Brott and Davis gave their affidavit *in preparatorio*. They insist upon the license, and allege that it was their intention to cause the vessel and cargo to be taken to New Orleans. They aver that they are loyal citizens, and that no enemy of the United States had any interest in the vessel or cargo. The affidavit is very full as to the procuring and transmission of the alleged license, and as to the loading of the vessel at Mobile by their agents; but is wholly silent as to who are the owners, and does not allege the whole or any part of the ownership to be in themselves. Under the circumstances, this omission can hardly be deemed accidental. It has very much the appearance of the caution of a special plea. Netto and Yocum were also examined *in preparatorio*.

They repeat their belief as to the ownership, except that Netto states the turpentine to have belonged to himself and the crew. Netto also states, that after they had passed Fort Morgan, Yocum told him New Orleans was their destination, and that he would have obeyed Yocum's order to take the vessel there. Yocum testifies that he was only supercargo, that he was to receive $500 for his services, and that he had no interest in the property. He said further, that from what he had heard Worne say in Mobile, his understanding was, that the vessel and cargo belonged to Brott, Davis & Shons, and Oliver & Worne. His instructions were to proceed to the mouth of the Mississippi—thence to communicate with Brott, Davis & Shons, and to await orders from

them. Hubbel, one of the passengers, in his examination *in preparatorio*, says that the clearance was taken for Havana as a blind to enable the vessel to get away. Yocum told him at Mobile that she was going to New Orleans. As evidence of Yocum's intention to take her to the blockading fleet, he says, that when she started the wind was so low that she could not make more than two miles an hour, and that hence it was difficult to prevail on the pilot to take her out.

In regard to the important fact last mentioned the captain and supercargo are wholly silent.

In the light of this testimony, it is difficult to resist the conclusion that the vessel left Mobile, with alternative purposes; one, if possible to evade the blockading fleet and make Havana; the other, if intercepted and seized, to set up the license and insist upon the pretext, that she was proceeding, under its authority, in good faith to New Orleans. As we shall not place our judgment upon this ground, it is unnecessary further to pursue the subject.

The license relied upon is as follows:

CUSTOM HOUSE, NEW ORLEANS,
COLLECTOR'S OFFICE, February 16th, 1863.

The United States military and other authorities at New Orleans permit cotton to be received here from beyond the United States military lines, and such cotton is exempt from seizure or confiscation. An order is in my hands from Major-General Banks approving and directing this policy. The only condition imposed is that cotton or other produce must not be bought with specie.

All cotton or other produce brought hither from the Confederate lines by Brott, Davis & Shons will not be interfered with in any manner, and they can ship it direct to any foreign or domestic port.

GEORGE S. DENISON,
Special Agent of the Treas. Dep't and Acting Collector of Customs.

Approved. D. G. FARRAGUT,
Rear Admiral.

The effect of this paper depends upon the authority under

which it was issued. The fifth section of the act of July 13th, 1861, authorized the President to proclaim any State or part of a State in a condition of insurrection, and it declared, that thereupon all commercial intercourse between that territory and the citizens of the rest of the United States, should cease and be unlawful, so long as the condition of hostility should continue, and that all goods and merchandise coming from such territory, into other parts of the United States, and all proceeding to such territory by land or water, and the vessel or vehicle conveying them, or conveying persons to or from such territory, should be forfeited to the United States: "*Provided, however*, That the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury."

There is no other statutory provision bearing upon the subject, material to be considered.

On the 16th day of August, 1861, the President issued his proclamation declaring the inhabitants of the rebel States, including Alabama, to be in a state of insurrection.

On the 28th of the same month the Secretary of the Treasury, pursuant to the provisions of the act referred to, issued a series of regulations upon the subject of commercial intercourse with those States.

These regulations continued in force until the 31st of March, 1863, when a new series were issued by the same authority. The former were in force when the alleged license bears date; the latter when the vessel and cargo left Mobile and when they were captured. It is unnecessary to analyze them. It is sufficient to remark, that they contain nothing which affords the slightest pretext for issuing such a paper. It is in conflict with rules and requirements con-

tained in both of them. It finds no warrant in the statute. The statute prescribes that the President shall license the trade. The only function of the Secretary was to establish the rules by which it should be regulated, when thus permitted. The order of General Banks is not produced. If it were as comprehensive as the special agent assumed it to be, it covered shipments to New Orleans from Wilmington, Charleston, and all other points in the rebel States. It embraced merchandise, coming alike from places within, and places beyond his military lines. With respect to the latter it was clearly void. The President only could grant such a license. Mobile was then in possession of the enemy. The vessel and cargo bore the stamp of the enemy property. The paper relied upon was a nullity, and gave them no protection. They were as much liable to capture and condemnation as any other vessel or cargo, leaving a blockaded port and coming within reach of a blockading vessel.

The decree below was rightly rendered, and it is

AFFIRMED.

Mr. Justice GRIER:

I do not concur in this judgment. The vessel went out of Mobile by permission of the commander of the blockade there. To condemn such property would be a violation of good faith. No English court has ever condemned under such circumstances.

UNITED STATES v. MACDONALD.

A collector of customs is entitled to retain, under the fifth section of the act of March 3d, 1841 (5 Stat. at Large, 432), a sum not exceeding $2000 per annum from his receipts, as storage for the custody and safe-keeping of imported merchandise entered for warehousing and stored in bonded warehouses.

THE fifth section of the act of March 3d, 1841, enacts that in addition to the account required to be rendered by every