*Peisch and others *v.* Ware and others.

United States *v.* Cargo of the Ship Favourite.

Salvage.—Mistake.—Forfeiture.

Wine and spirits saved from a wreck and landed, are not liable to forfeiture, because unaccompanied with such marks and certificates as are required by law; nor because they were removed, without the consent of the collector, before the quantity and quality were ascertained, and the duties paid.

An award of arbitrators appointed under a mutual mistake of both parties, in supposing themselves bound by law to submit the matter in dispute to arbitration, is not obligatory.

The owner of goods cannot forfeit them, by an act done without his consent or connivance, or that of some person employed or trusted by him.

One half allowed for salvage in the Delaware Bay.

Quære? Whether goods saved are liable for duties?[1]

These cases were appeals from the Circuit Court for the district of Delaware. Peisch and others, owners of the ship Favourite and her cargo, libelled Ware and others, in the district court, for the possession of certain goods, part of that cargo, which the latter had saved from the ship, which had been wrecked in the Delaware Bay. The cargo consisted principally of wine, brandy, cordials, olive oil and silks.

On the night of the 26th of October 1804, the ship Favourite, being at anchor in the Delaware Bay, parted both cables, and was driven on to a shoal. The crew cut away all the masts; in the morning, she had drifted over the shoal, but the crew not being able to keep her clear with the pumps, and having eleven and a half feet of water in the hold, they quitted the ship, about 9 o'clock, A. M., and went to Cape May for assistance. On the same morning, about 10 o'clock, the ship was seen from the town of Lewes, a small town on the shore of the state of Delaware, but not a port of entry, by Thomas Rodney, an inspector and surveyor of the revenue, who resided at that place. The ship was then drifting out to sea, without masts, anchors, cables or rudder. He collected a number of men and boats, and went on board the ship, and having towed her on to a shoal called the Shears, they began to discharge the cargo into the boats. Rodney, supposing himself authorized by the wreck law, as it is called, of the state of Delaware, to take
*348] the lead in the business of salvage, *appointed Ware to superintend the delivery of the cargo from the ship, and went on shore himself, to attend to the landing and storage of the goods saved.

On the 29th of October, the mate, with three of the crew, returned to the ship, in a shallop they had procured at Cape May, with intent, as they said, to save what they could of the cargo. They found the ship in possession of Ware and others, who would not suffer the mate to take anything out of the ship, except his clothes and those of the crew. The mate then left the ship. There were 48 hands and six boats employed 16 days and 12 nights in saving the goods; besides four flats and seven or eight hands hired occasionally to work in the flats.

On the 7th of November, Peisch arrived, and on the 9th, offered to pay $4000 for salvage, which the salvors refused, the goods saved being supposed

[1] In the case of The Waterloo, 1 Bl. & How. 114, Judge Betts decided, that goods saved from a wreck, and brought within the United States, are subject to import duties, under the acts of congress. And see Jackson *v.* United States, 4 Mason 190; The Gertrude, 3 Story 68.

to be worth about $14,000, and demanded one-half for salvage. Not being able to agree, the parties supposing themselves bound by the law of Delaware, which requires an arbitration in such cases, referred the rate of salvage to three men, who awarded one-half to the salvors. On the 18th of November, the collector of the district of Delaware arrived at Lewes, and on the 19th, the salvors offered themselves ready to secure the duties upon their half of the goods saved, and requested that the amount of duties might be ascertained at Lewes. This the collector refused, and ordered the goods to be sent to Wilmington, a port of entry, to have the duties ascertained; and Rodney delivered them into his possession. The salvors then sued out a writ of replevin from the state court of Delaware, and took the possession of the goods from the collector, who thereupon seized them as forfeited to the United States, for breach of the revenue laws.

The first count of the libel filed by the United States, claimed the wine, brandy and cordials, as being forfeited, because they were unaccompanied with such marks and certificates as are required by law, the duties not having been paid or secured. *The second count claimed them as forfeited, [*34
because they were removed, without the consent of the collector, before the quantity and quality of the wines and spirits, and the duties thereon, were ascertained according to law; the duties not having been paid or secured. The third count claimed all the goods forfeited, because they were found concealed, the duties not having been paid or secured.

On this libel by the United States, the district court decreed, that the goods were not liable to forfeiture, but were subject to the terms of the decree of the court, in the suit respecting salvage, by Peisch and others against Ware and others; which decree was affirmed in the circuit court, and the United States appealed to this court.

Reed, United States attorney for the district of Delaware, contended: 1. That the libellants were entitled to damages against the salvors, to the whole amount of the goods saved, because, by the improper acts of the salvors, they have been forfeited to the United States, and so wholly lost to the libellants. 2. That the salvage allowed, if any is due, was too high.

1. The goods are forfeited to the United States, first, under the 43d section of the act of congress regulating the collection of duties on imports and tonnage (1 U. S. Stat. 660), because found without marks and certificates; second, under the 51st section of the same act (Ibid. 667), because removed before the proof, quality and quantity thereof were ascertained, and the duties paid or secured; and thirdly, under the 68th section of the same law (Ibid. 677), because they were concealed, the duties not having been paid or secured.

The removal of the wines and spirits, without marks and certificates, is clearly within the letter of the law. The power to remit or mitigate the forfeiture, can only be exercised by the secretary of the treasury. *It [*350
is not necessary that Peisch and others should have been privy to the removal. It is wholly unimportant who removes the goods. The United States look only to the thing itself. The proceeding is *in rem*. If the unlawful act be done even by a stranger, the goods are forfeited. The revenue laws are to be construed strictly according to their letter. *Priestman* v. *United States*, 4 Dall. 28. There is no difference between a careless and a

fraudulent omission of duty. Peters' Adm. 448. The offer to pay the duties was illusory; the collector could not receive them.

Salvage goods are liable to duties, if intended for importation into this country. The case of *Shepherd* v. *Gosnold*, Vaugh. 166, was of wreck on shore, not of floating wreck; and the goods saved were not intended for importation. 6 Bac. Abr. 280, 281 (Gwill. ed.); 1 Peters' Adm. 45, 47, 62. In the case of *The Blaireau*, in this court (2 Cr. 240), there was no question as to the duties; the goods were not intended for importation.(*a*)

If, then, the goods are forfeited to the United States by the unlawful acts of the salvors, the court below ought to have decreed restitution in value, and given damages to the libellants. *The Der Mohr*, 3 Rob. 108. Their libel, although it avers an offer to pay salvage, does not preclude them from averring that no salvage is due, nor from claiming damages. The libel contains a prayer for general relief, and the court will pass such a decree as their case, upon proof, deserves, without regard to the specific relief prayed. 3 Dall. 86, 333; 3 Rob. 108 (American ed.).

*351] *But even if the goods are not liable to forfeiture, for the improper conduct of the salvors, yet they are not entitled to salvage. By the 52d section of the act before recited (1 U. S. Stat. 665), it is made the duty of the collector, in case of an incomplete entry, to cause the goods to be stored. An incomplete entry of these goods was made, and the revenue officer, Rodney, did no more than his duty in securing the goods. The other persons acted only as his servants or agents. He was paid his daily allowance for his trouble, by the collector. The appellees never had such possession of the goods as entitled them to retain them for salvage. The possession was in the United States, who held a prior lien on them for the duties. Rodney first took possession of them, as an officer of the revenue, and held them for the United States, not for the salvors. They never had a rightful possession. The only possession they ever had was under void writs of replevin from the state court, which had no jurisdiction.

The possession upon which the writs of replevin were founded, was, at most, a possession under a lien for salvage, which is a matter exclusively of admiralty jurisdiction. The writs of replevin being void, they were trespassers in taking possession under them. A tortious act cannot be the foundation of right. They forfeited all right to salvage, by resisting the mate and crew; and by the embezzlement of part of the goods saved.

The award does not preclude the libellants from averring that no salvage is due. The arbitration was entered into by mistake. It was supposed by Peisch, that he was bound to enter into the reference, by the 7th section of the act of assembly of Delaware, of February 2d, 1786. (Delaware Laws, vol. 2, p. 831.) But that law was repealed by the constitution of the United States, which transfers all the admiralty jurisdiction to the courts of the United States exclusively; and by the act of congress (the judiciary act of 1789) which provides for the exclusive exercise of that jurisdiction by the

*352] district courts. *Since this act of congress, the state officers have had no right to meddle with property within the admiralty jurisdiction.

(*a*) JOHNSON, J.—Do the opposite counsel seriously contend this point?

Van Dyke, for the appellees.—We do not think the question important to this case, but we have strong authorities in support of our side of it.

The question of salvage is exclusively of admiralty jurisdiction, and belongs to the district court; and every provision of the act of assembly of Delaware upon that subject is entirely repealed. Peisch's assent, therefore, to the arbitration, being founded in a mistake of his rights, was a void act; and the award can derive no validity from his assent. If it derives no validity from his assent, it is a mere nullity, for it is the judgment of an incompetent tribunal. The arbitrators could derive no authority from the law of Delaware. A court which has exclusive jurisdiction of the principal subject, has also jurisdiction of the incidents. The common-law courts of the state had no jurisdiction in any shape whatever. *Brevoor* v. *Ship Fair American*, 1 Pet. Adm. 93; *Smart* v. *Wolfe*, 3 T. R. 343.

But even if the act of assembly were in force, the award is not made in conformity with its provisions. In the first place, no authority can be exercised under that law, but by a sheriff, or a justice of peace, or an officer of the customs, and then only upon application by the master or owner of the ship. But here, so far from being requested by any person interested in the ship, the salvors drove away the mate and the crew; and secondly, the persons claiming salvage under that law must have been summoned as salvors. The salvors have resorted to an incompetent tribunal; they ought to have libelled in the district court, which has exclusive cognisance of the case.

2. But if any salvage was due, the amount decreed is exorbitant. The amount offered was a very liberal compensation for their time, risk and labor. There was no danger. The vessel was all the time within the bay; and they had pilot boats constantly alongside. The cargo was in its nature so buoyant, that the ship could not sink. *In the case in 19 Viner 275, only one-tenth was given for salvage on the coast. In *The Blaireau* (2 Cr. 240), only one-third was given; and that was a case of great risk and merit. 1 Peters' Adm. 10, 37; Molloy, lib. 5, c. 10. [*353

Broom and *Van Dyke*, contrà.—There are only two questions in this case. 1. Whether the goods are forfeited to the United States; and 2. Whether the salvage allowed is too high?

1. The inspector had no authority to unlade the ship. No entry had been made, and no permit granted. He could only unlade in the character of a salvor. When the goods were landed, he had a right to direct where they should be deposited, until the duties were ascertained, and paid or secured, but his right extended no further. The lien of the salvors was not inconsistent with that of the United States. As to everything beyond the security of the revenue, the officer was a trustee for the salvors and the owners. He held as much for them, as he did for the United States, until he undertook to hold adversely.

The state courts had a right to issue the writs of replevin. Replevin, in Delaware, is a substitute for trover. It is the writ by which they try the question of property; and trover will certainly lie against a revenue officer for an illegal seizure. Esp. N. P. 583; 3 Rob. 178; 4 Ibid. 160, 188; 5 Burr. 2657.

It is not denied, that salvage is a question of admiralty jurisdiction, and that the court of admiralty has also cognisance of incidents; but not exclusive cognisance. It was never so contended in England. The court of ad-

miralty had a hard struggle to get even a concurrent cognisance of incidental questions.

Salvage goods are not liable to duties, nor, if they are, can the goods be forfeited by any act of the salvors. *Such was never the intent of the act of congress. All statutes must have a reasonable construction. Vin. tit. Statute 519 ; 1 Bl. Com. 91. By the revenue laws, goods are liable to forfeiture by landing at any other than a port of delivery, or without permit, or in the night, yet it will not be contended, that these provisions apply to goods wrecked and driven on shore. But they are certainly within the letter of the act.

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In *Courtney* v. *Bower*, cited in 1 Lord Raym. 388, 501, it is not stated, that the goods were intended to be imported, and such is not the ground of decision in *Shepherd* v. *Gosnold*, Vaugh. 159. But the true ground of decision is, that the goods were not imported as merchandise, but were driven in by stress of weather ; that it was not a voluntary importation. 6 Gwillim's Bac. Abr. 280. Although the words of the British navigation act, 12 Car. II., c. 18, are, "imported as merchandise," yet those statutes which use only the word "imported," have received the same construction. Reeve's Law of Shipping 202 ; 2 Wils. 257.

The act of congress means a voluntary importation. It is in many respects similar to the British statute. There is no importation, until bulk is broken. Until then, there is no forfeiture of the goods, although the vessel depart with them. There is only a penalty of $400 on the master. Collection Law, §§ 29, 31, 32, 33, 36, 45. *Hallet & Bowne* v. *Jenks* (3 Cr. 219). The statute of 5 Geo. I. makes stranded goods liable to duty ; hence it may be inferred, that they would not have been so liable but for the statute. Bac. Abr. tit. Smuggling, 274 ; Hardr. 360 ; Hargrave's Law Tracts 215, 225 ; Reeve 24, 66, 85, 207, 208, 212, &c. ; *Reniger* v. *Fagossa*, 1 Plowd. 1 ; Cro. Eliz. 358; Coll. Jurid. 72, 75, 79 ; Reeve 200 ; Loft 200 ; 1 Hawk. c. 17, § 83 ; 1 Ld. Raym. 377. The king has no remedy for his subsidy, unless the goods be landed.

There must be fraud or negligence. No act of the salvors forfeited the goods. If they are trespassers, as *is contended, no act of theirs could forfeit them. It must be an act done by the owners, or with their privity, or by some person acting under their authority.

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In the case of *The Blaireau*, Judge WINCHESTER decided that salvage goods were not liable to duties ; and the decision on that point was not questioned on the appeal. (*a*)

(*a*) The counsel for the appellees were permitted in this court to read the following letter from Judge WINCHESTER to Judge Bedford, stating the grounds of that decision.

Shaware, Baltimore County, March 9, 1808.

Dear Sir:—It seems, that the full statement of the arguments and opinion made by me, in the case of duties on wreck and salvage goods, has been lost or mislaid. I can, therefore, only furnish you with the state of the case, the points and authorities.

The ship La Blaireau, on a voyage from the West Indies to France, and wholly owned by foreign subjects, was run down, at night, by a Spanish ship of war, and abandoned by the crew, who were taken off by the Spanish vessel. The next morning the Blaireau was discovered by the British ship Firm, taken up as a wreck, and salvage ; and conducted to the port of Baltimore. The cargo was very valuable, containing sugars, coffee, liquors, lace and diamonds. The two latter articles were in very small boxes,

*Misconduct is charged against the salvors, because they prevented the mate and three of the crew from taking away part of the cargo. *But the salvors had a right so to do. They were in possession, and had saved a considerable part of the cargo, and were in the act of saving the residue; they had a lien upon the whole for salvage. There is no evidence of any embezzlement by the salvors; that charge is not supported. Nor is there the least evidence that any part of the goods was concealed to evade payment of the duties. [*357

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and the facility of their concealment, had tempted the British captain to conceal some of the boxes; but the fact was discovered, in consequence of a quarrel between him and another person, relative to a division of the booty. An action was instituted against the captain for the penalty imposed by the revenue law, on concealing these articles of lace and jewelry, upon the ground that they were chargeable with duties.

Mr. Martin argued for the defendant, that the case was not within any statute; that it was not an importation, within the revenue laws, which go only to ordinary cases of trade, with the exception of the single case of distress, provided for by the 60th section of the act. He commented on the 23d, 29th, 30th, 60th, 68th and 69th sections, to show that the whole of the provisions of the law applied only to voluntary importations; that they did not apply to salvage goods, which could not be accompanied by the manifests, bills of lading, &c., required in ordinary cases; nor could the oaths imposed by law be taken in the case of salvage. He then argued, that no misconduct whatever of the salvors can create a forfeiture of goods of which they had taken possession as salvors, and referred to 6 Bac. Abr. 280 (Gwill. edit.), on the general question, relying on the cases there cited, and 1 Ld. Raym. 388, 501; Reeve's Law of Shipping 201; Bunbury 236; Stat. 5 Geo. I., c. 11. § 13; 26 Geo. II., c. 19, § 5. The district attorney argued, that the importation meant a bringing in. That the privity of owners was not necessary. Seamen forfeit the ship by running the goods, and by the 111th section of the revenue law, which provides for an entry, where particulars are unknown, salvage goods might be entered.

The court decided, that salvage goods were not dutiable; and referred to the following authorities, in addition to those mentioned at the bar. The case of *Dyson* v. *Lord Villars* (a very strong case), Collect. Juridica 79, 80; 2 Str., 943; Hardres 362; Parker 212; Cro. Eliz. 534. The court relied on the 61st and the 62d sections of the revenue law, to show that the duties were not due on importation, and to bring the case within Sir J. Marriot's opinion, Collect. Juridica 88. Two decisions of Judge Paca were also referred to by the court; one of which decided that prize goods were not operated upon by the ordinary revenue laws; and that brandy (brought) in as prize by a French privateer (before the prohibition to sell their prize goods in our ports), though in vessels of less capacity than allowed in the ordinary course of trade, were not forfeitable. The other, under the statute of the United States which prohibited the exportation of arms, &c. Judge Paca held, that the exportation of arms, &c., constituting the equipment of the vessel, was not an exportation within the statute. The court (in the case of *The Blaireau*) intimated a strong opinion that importation implied a bringing in voluntarily; and referred to the decisions under the non-intercourse law with France, where it was holden that commencing, after an involuntary going into French dominions, was not a commencing prohibited by law, and also relied strongly on *O'Callion's Case*, 1 Hawk. c. 17, § 83, upon the statute 27 Eliz. c. 2.

The above contains the substance of the arguments and opinions, and all the authorities referred to in the case of *The Blaireau*. It will afford me pleasure, if you shall be able to derive any assistance from them. I am, very respectfully, your obedient servant,

J. Winchester.

Hon. Judge Bedford.

2. The award is conclusive as to the rate of salvage. It is immaterial, whether the law of Delaware be in force or not. But Delaware is a sovereign independent state, and has all the rights of sovereignty not given up to the United States by the constitution. The United States admiralty court is bound by the laws of Delaware, so far as they are consistent with those of the United States. The jurisdiction is given to the courts of the United States by the constitution and laws of the United States, but the state laws are rules of decision in those courts, in cases where they apply.

It is said, the award was not made agreeable to the act, and that the parties were not bound to submit to the arbitration. That act is like that which gives power to the commissioners of the *cinque ports* to decide the question of salvage; and if the parties submit to the jurisdiction, it is fit they should abide by the award; although the arbitrators had no jurisdiction otherwise than by consent. *The American Hero*, 3 Rob. 261. The libellants objected to the amount, not to the jurisdiction. Whether it be an award under the act of Delaware, or by consent of parties, it is equally binding; and the court cannot look into the reasonableness of it.

As to the amount of salvage, the counsel cited 1 Rob. 263; 3 Ibid. 286; and *The Jonge Bastiaan*, 5 Ibid. 289, where two-thirds were given for salvage in a case of derelict.

*358] *Rodney* (Attorney-General), in reply.—There was not much risk to the owners of the cargo; it was not in great danger; and there was no danger in saving the goods. The salvors, at most, can only claim a compensation for their time and labor. But they are not entitled to anything. They resisted the officer of the ship, when, by the very law of Delaware, under which they pretend to have acted, they ought to have obeyed his orders.

The goods were subject to duty and forfeiture. There is no reason why goods, having paid salvage, should not be liable to duties. The decision of Judge Winchester, in the case of *The Blaireau*, is not admitted to be law. Even wearing-apparel would be liable, but for the exception in the act. The exception proves the general rule. The British statute differs in its language from ours, and therefore, the English authorities do not apply. The misfortune only exempts the owners from the penalties of the act, but does not exempt the goods from forfeiture.

March 9th, 1808. Marshall, Ch. J., delivered the opinion of the court as follows:—In these cases, two questions are to be decided by the court. 1st. Is the cargo of the Favourite, or any part of it, forfeited to the United States? 2d. Are Ware and others entitled to any, and if to any, to what salvage?

The first count in the first libel filed on the part of the United States claims the brandies, wines and cordials therein mentioned, in consequence of their being found in the possession of certain persons therein named, unac-

*359] companied *with such marks and certificates as are required by law, the duties thereon not having been paid, or secured to be paid. The second count claims them as forfeited, because they were removed, without the consent of the collector, before the quantity and quality of the said wines and spirits, and the duties thereon, were ascertained according to law; the duties thereon not having been paid or secured. The third count

claims them, because they were found concealed, the duties not having been paid or secured according to law.

The second libel claims certain other goods, which were parcel of the cargo of the Favourite, as forfeited, by being found unlawfully concealed, the duties thereon not having been paid or secured.

The facts of the case are these: The ship Favourite, belonging to Mr. Peisch, of Philadelphia, was discovered, about the last of October, adrift in the Bay of Delaware, with her masts gone by the board, and without anchors, cables or rudder, and in danger of being carried out to sea. A company was formed to save the vessel and cargo; and with considerable labor, in the course of several days, the cargo was unladen and landed at Lewes, a small town on the bay, not a port of delivery, where it was, with the approbation of the collector, left under the care and in the custody of a revenue officer residing at that place, who was one of the party that had originally taken possession of the vessel, and under whose direction the whole business had been in a great measure conducted. On the 3d of November, while the salvors were unlading the vessel and landing the cargo, an imperfect entry was made by the owners or consignees, after which an award was made between the owners and salvors, by which the salvors were allowed one-half the cargo. The owners were dissatisfied with this award, and refused to acquiesce under it. The collector ordered the goods, which had been in the custody of a revenue officer, to be carried to Wilmington for the purpose of *ascertaining the amount of duties. [*360
The salvors objected to this, and requested that the duties might be ascertained at Lewes, offering at the same time to pay the duties on the moiety of the cargo claimed by them under the award. The collector persisting in his determination to remove the goods to Wilmington, the salvors sued out a writ of replevin from the state court, and by force of that writ, took the goods out of the possession of the revenue officer. This act is the foundation of the forfeiture alleged in the libels.

The forfeiture said to be occasioned by the goods being found without the marks and certificates required by law, depends upon the 43d section of the act for collecting duties, and on other sections of the same act, which are explanatory of the 43d section. The particular clause giving the forfeiture is in these words: "And if any casks, chests, vessels or cases, containing distilled spirits, wines or teas, which by the foregoing provisions ought to be marked and accompanied with certificates, shall be found in possession of any person, unaccompanied with such marks and certificates, it shall be presumptive evidence that the same are liable to forfeiture." The law then authorizes a seizure, and subjects such distilled spirits, &c., to forfeiture, unless it be proved at the trial, that they were imported according to law, and that the duties were paid or secured. The objects of this clause are those vessels only which, "by the foregoing provisions," ought to be marked and accompanied with certificates. To determine its extent, the "foregoing provisions" must be looked into.

This subject is first taken up in the 37th section of the act. That section directs particular and additional entries to be made of distilled spirits, wines and teas, which provisions are adapted to regular importation, not to those articles when saved from a wreck.

The entry is to be made by the importer or consignee, and specifications

are required which can only be given by the owner or consignee, when in possession of the papers relative to the vessel and cargo. If a vessel be *361] *wrecked on the coast, the cargo must be lost, or brought on shore, without the knowledge of the owner, or consignee, so as to put it in his power to make the entry, and the salvors are not only not the persons designated by the law to make, but they will often not possess the information which would enable them to make it. The act proceeds to require that this entry shall be transmitted to the surveyor of the port where the delivery of the cargo is to commence, to whom also every permit for unlading or landing any part of the cargo must be previously produced, who shall record the same, and indorse thereon the word "inspected," the time when, and his own name. Goods landed previous to these formalities are to be forfeited.

These regulations obviously respect a regular importation, where all these prerequisites to landing may be performed; not cases where a landing must take place without them. To suppose them applicable to salvage goods, would be to suppose that the legislature designed to prohibit salvage entirely, or to forfeit the cargoes of all vessels which might be wrecked on the coast.

The 38th section requires that all distilled spirits, wines and teas, shall be landed under the inspection of the surveyor, or other officer acting as inspector of the revenue for the port, and therefore, can relate only to cases of regular importation at the port of delivery, where the revenue officer may superintend the landing. He is directed to attend at all reasonable times, not at all places. The 39th section prescribes the duty of the officer of inspection of the port where the spirits, &c., may be landed. He is to ascertain the duties, and mark the casks. The 40th section directs the surveyor, or chief officer of inspection of the port or district in which the said spirits, wines or teas shall be landed, to give the proprietor, importer or consignee a general certificate; and the 41st section directs him to give a particular *362] certificate *for each vessel, which certificate passes with the vessel to the purchaser. These sections are connected with those which precede them, and relate to regular importations, where the spirits, &c., are landed under a permit, at a port of delivery, and there is a proprietor, importer or consignee, or an agent to whom the certificates may be granted; not to spirits, &c., which may, from the nature of things, lawfully get into the possession of individuals without the knowledge of a revenue officer. The 42d section only directs that blank certificates shall be provided.

These are the sections which precede that which is supposed to give the forfeiture claimed under this count of the libel. The first part of the 43d section directs the proprietor, importer or consignee, who may receive the said certificates, to deliver them with the vessels to the purchaser; and then comes the clause which subjects to forfeiture all vessels containing spirits, &c., which may be found unmarked and not accompanied by certificates, which by the foregoing provisions ought to be marked and accompanied by certificates.

In the foregoing provisions, the legislature, in the opinion of this court, did not intend to comprehend wrecked goods, or goods found under circumstances like those in the Favourite, where the vessel was deserted by her crew, and where it might be necessary, for the preservation of the goods, to take them to the nearest accessible part of the coast. Either these spirits

and wines would have been liable to forfeiture, if brought to land under the most pressing circumstances, where inevitable loss must attend any delay, if a revenue officer should not be present to take possession of them, or the single circumstance of their being found unmarked and unaccompanied with certificates, is not in itself sufficient to forfeit them.

The opinion of the court, that it was not the intention of the legislature to subject goods, under such circumstances, to forfeiture, is not formed exclusively *on the extreme severity of such a regulation. It is formed also on what is deemed a fair construction of the language of the several sections of the law, which seems not adapted to cases like the present. [*363

The second count in the libel claims the goods as forfeited, because they were, without the consent of the proper officer, removed from the place where they were deposited, before the amount of duties was ascertained, the duties at that time not being paid or secured. Neither this count, nor the first, supposes any forfeiture to have been incurred by the landing of the goods, or the unlading of the vessel. The spirits and wines are presumed to have been legally brought on shore, and it is the removal only which gives title to the United States. The court, therefore, is to inquire, whether these goods were under such circumstances, that a removal, such as has taken place in this case, will produce a forfeiture. This depends on the 51st section of the law, in expounding which it becomes proper to notice the 50th also. This section prohibits the unlading of any vessel, or the landing of any goods, without a permit granted by the proper officers, and subjects the master or other person having the command of such vessel, and all those who shall be concerned in unlading, removing, or storing such goods, to heavy penalties, and the goods themselves to forfeiture.

It was well observed, that the application of this section to cases where the goods must perish, if not immediately brought on shore, and to cases in which a permit cannot regularly be granted, would be not only to prohibit, but to punish every attempt to save a cargo about to be lost on the coast. This construction of the law could only be made, where the words would admit of no other. But it is unquestionably a correct legal principle, that a forfeiture can only be applied to those cases in which the means that are prescribed for the prevention of a forfeiture may be employed. The means prescribed to save the forfeiture given in the 50th section cannot be employed, where a vessel is deserted by her crew, or cannot be brought into port. The permit cannot be obtained, nor can those steps which must precede the attainment *of a permit be taken. Upon just legal construction, then, the landing of these goods, without a permit, did not subject them to the forfeiture of the 50th section. This act is not within the law. The 50th section is calculated for cases in which the general requisites of the law can be complied with, not for salvage goods, in cases where those general requisites cannot be complied with. [*364

The 51st section relates to the removal of goods from the wharf or place on which they may have been landed, in conformity with the directions of the 50th section. It presupposes a permit, and that they were landed under the inspection of a revenue officer, in the manner prescribed by the 38th section. It presupposes a case in which the gauging and marking may be done, and the other means prescribed for the ascertainment of the duties

and security of the revenue may be taken, at the place of landing; not a case in which a landing must be made, without a permit, often in the absence of a revenue officer, and where the goods could not be permitted, without extreme peril, to remain at the place of landing, until these measures should be taken.

The court is also of opinion, that the removal for which the act punishes the owner with a forfeiture of the goods, must be made with his consent or connivance, or with that of some person employed or trusted by him.

If, by private theft, or open robbery, without any fault on his part, his property should be invaded, while in the custody of the officer of the revenue, the law cannot be understood to punish him with the forfeiture of that property. In the 52d section, therefore, to which the revenue officers seem to have intended to conform, so far as the case would admit, which directs them in the case of an incomplete entry, to store the goods at the risk and expence of the owner or consignee, no forfeiture is annexed to their removal, unless the penalties of the 51st section, or of the 43d section, be applied to the 52d.

The court is of opinion, that those penalties cannot be so applied in this
*365] case, not only because, from the whole *tenor of the law, its provisions appear not to be adapted to goods saved from a vessel, under the circumstances in which the Favourite was found, but because also, the law is not understood to forfeit the property of owners or consignees, on account of the misconduct of mere strangers, over whom such owners or consignees could have no control.

It has been urged on the part of the United States, that although the property of the owner should not be forfeited, yet that moiety which is claimed by the salvors has justly incurred the penalties of the law. But if the award rendered in this case be not binding, the salvors could have only a general claim for salvage, such as a court might allow; and if it be binding, still they acquired no title to any specific property. Their claim was in the nature of a general lien, and any irregular proceeding on their part, would rather furnish motives for diminishing their salvage, if that be not absolutely fixed by the award, than ground of forfeiture. The irregularity, too, if any, which has been committed by them, being merely an attempt to assert, in a course of law, a title they supposed themselves to possess, and with no view to defraud the revenue, this court would not be inclined to put a strained construction on the act of congress, in order to create a forfeiture.

The third count in the first libel, and the second libel, claim a forfeiture on the allegation that the goods were concealed. The fact does not support this allegation. There was no concealment in the case.

Taking all the circumstances into consideration, it is the unanimous opinion of the court, that no forfeiture has been incurred, and that the libels filed on the part of the United States were properly dismissed.

The next question to be considered is, to what amount of salvage are the salvors entitled? That their claim is good for something, is the opinion of all the judges; but on the amount to be allowed, the same unanimity does not prevail.

*366] *For the *quantum* of salvage to be allowed, no positive rules are fixed. It depends on the merit of salvors, in estimating which, a va-

riety of considerations have their influence. In the case before the court, the opinion of the majority is, that the sentence of the circuit court ought to be affirmed. This opinion, however, is made up on different grounds. Two of the judges are of opinion, that the award was fairly entered into, and although both parties might be mistaken with respect to the obligation created by the law of Delaware, yet there is no reason to suppose any imposition on either part; nor is there any other ground, on which the award can be impeached or set aside. Two other judges, who do not think the award obligatory, view it as the opinion of fair and intelligent men, on the spot, of the real merit of the salvors, and connecting it with the testimony in the cause, are in favor of the salvage which has been awarded, and which has been allowed by the sentences of the district and circuit courts. Three judges are of opinion that the award is of no validity, and ought to have no influence. They think the conduct of the salvors, in taking the goods out of the possession of the revenue officer, though by legal process, is improper, and that the salvage allowed is too great. They acquiesce, however, cheerfully in the opinion of the majority of the court, and express their dissent from that opinion, solely for the purpose of preventing this sentence from having more than its due influence on future cases of salvage.

The sentence of the circuit court is affirmed, without costs.

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*Shearman *v.* Irvine's Lessee. [*367

Statute of limitations.

The act of limitations of Georgia does not require an entry into lands within seven years after the title accrued, unless there be some adversary possession or title, to be defeated by such entry.

Error to the Circuit Court for the district of Georgia, in an action of ejectment, brought (on the 15th of October 1804), by Irvine's Lessee against Shearman, for a tract of land in Camden county, in the state of Georgia.

The defendant below took a bill of exceptions to the refusal of the court to nonsuit the plaintiff on the trial, because he had not proved "an entry within seven years after the title of the grantees accrued, or any entry by either of the heirs or persons claiming under the grantees, within seven years after their titles respectively accrued."

The lessor of the plaintiff had produced in evidence two grants from the province of Georgia, in 1766, to Alexander Baillie, under whom he claimed title by descent, and whose heir-at-law he had proved himself to be. There was no evidence of title, or even of adverse possession, on the part of the defendant, before the bringing of the suit, other than the averment of ouster in the declaration, which was laid on the 10th of September 1804; nor any evidence of title out of the lessor of the plaintiff.

In support of his motion for a nonsuit, the defendant relied on the act of limitations of Georgia, passed in the year 1767, by which it is enacted, "That all writs of *formedon* in *descender*, *remainder* and *reverter* of any lands, &c., or any other writ, suit or action whatsoever, hereafter to be sued or brought, by occasion or means of any title heretofore accrued, happened or fallen, or which may hereafter descend, happen or fall, shall be sued or