THE FAME.

Case No. 4,633.

{1 Brown, Adm. 42.}[1]

District Court, D. Michigan. Dec., 1858.

FORFEITURE—DUTY OF DELIVERING MANIFEST—UNLADING AND DELIVERY.

1. Where a vessel and cargo appear by her manifest to be consigned to an American port, parol evidence will not be permitted to control the intention so expressed, and to show that the cargo was, in fact, destined to a Canadian port.
2. Under the first section of the act of 1821 {3 Stat. 616}, the master of a vessel entering a port of the United States, with merchandise subject to duty on board, and consigned to such port, is bound to deliver his manifest, notwithstanding he may intend such merchandise to be returned to Canada.
3. The transhipment of a cargo from one vessel to another, while lying at a wharf in port, is an unlading and delivery within the meaning of the 50th section of the act of 1799 {1 Stat. 665}.
4. Innocence of an intent to defraud the revenue will not prevent a forfeiture where a violation of the statute is clearly proven.

Information for forfeiture. The first count charged a violation of the first section of the act of March, A. D. 1821, in that the bark, being an unregistered vessel, imported and brought into the port of Detroit, from the province of Canada, certain liquors subject to duty, without a manifest of the same being delivered by the master to the collector nearest to the boundary line, or nearest to the waters by which the liquors were brought, but that the master passed by and avoided the office of the collector at which the manifest ought to have been delivered, &c. The second count was founded upon the 50th section of the act of 1799, and charged that the same liquors were brought, by some person unknown, in the Fame, from a Canadian port to Port Huron, in the district of Detroit, and there unladened and delivered from her in the night time, without a license from the collector or other proper officer. The answer simply denied, in general terms, the allegations of the libel. The liquors were taken on board at Amherstburg, Canada, and were manifested to Detroit, although they were not, in fact, intended for exportation, but were designed to be delivered at Sarnia and Goderich, in Canada. The Fame passed by Detroit without stopping, and arrived at Port Huron late at night, where the steamer Ploughboy was waiting to receive the liquors. Efforts were made to find an officer of customs at Port Huron who could give a permit, but, owing to the lateness of the hour, they were unsuccessful, and the liquors were transhipped from the Fame to the Ploughboy without authority, and by the latter carried to Sarnia and Goderich and unladened.

Jos. Miller, Jr., Dist. Atty., for the United States.

Levi Bishop, for claimant.

Our defence is simply that the goods were not consigned to the United States; that they were not imported into the United States; that there was no intention to import

them; they were not landed; they were not, therefore, subject to duty; and they do not, therefore, cause a forfeiture, and none has, in fact, taken place. The facts are simple and are clearly proved. The goods

were shipped at Maiden, consigned to another Canada port, but as the Fame only went to Port Huron, the instructions were to put the liquors on another boat, bound to the port of destination, which was done, and the goods were never, in fact, imported into the United States.

The following authorities bear on the subject: A claimant may explain a prima facie case against him so as to show his innocence, and that there is no cause of forfeiture. The Robert Edwards, 6 Wheat. [19 U. S.] 187; U. S. v. Nine Packages of Linen [Case No. 15,884]. The construction of all revenue laws must be according to the commercial sense of the terms used in them, by congress. Lee v. Lincoln [Case No. 8,195]; Bacon v. Bancroft [Id. 714]; U. S. v. 112 Casks Sugar, 8 Pet. [33 U. S.] 277; Curtis v. Martin, 3 How. [44 U. S.] 106. The mere transit, on our side of the line of a boundary river, if not done with the intent to import the goods, is not a cause of forfeiture. The Apollon, 9 Wheat. [22 U. S.] 362; Conk. Pr. 326. To make an importation complete, there must be an arrival at the port of entry with an intent to unload the goods there. U. S. v. Lindsey [Case No. 15,603]; U. S. v. Lyman [Id. 15,647]. By importation, is to be understood bringing goods into port with intent to land them. U. S. v. Vowell, 5 Cranch [9 U. S.] 368; The Mary [Case No. 9,183]; U. S. v. Arnold [Id. 14,469]; Prince v. U. S. [Id. 11,425]; Perot v. U. S. [Id. 10,993]. The revenue laws relate solely to goods imported into the country for trade, sale and consumption. The Gertrude [Id. 5,370], Merely bringing goods into the country for a temporary purpose, with the intention of returning with them, and without any intention to import them, does not occasion a forfeiture. U. S. v. One Sorrel Horse, 22 Vt. 655. In this case the goods were not merely put on another ship, without landing them, and sent forward, but the goods were landed and actually used a long time in this country. To occasion a forfeiture, a clandestine importation, or a fraudulent smuggling traffic must be intended. The Boston [Case No. 1,670]; The Forester [Id. 15,132]. Now I presume this seizure is made pursuant to the act of March 2, 1821, § 1 (Conk. Pr. 322, 323; 3 Stat. 616). So that in order to establish the forfeiture, the goods must have been subject to duty, under the act of July 30, 1846 (9 Stat. 42). That act imposes duties on imported goods alone (same authorities). But these liquors were not imported. They were not intended for the United States; they were not consigned here they were not landed here for any purpose; and in short, they were not imported; they were not, therefore, subject to duty; there was no forfeiture, and we ought to be dismissed. The good character of the claimant, and also of the owner of the liquors, go far in such a case. U. S. v. Nine Packages of Linen [Case No. 15,884]. And it cannot for one moment be supposed that Mr. Bagg, or Mr. McLeod, intended to incur the heavy penalties of a clandestine importation. Such a supposition becomes supremely absurd, in view of the testimony that these same liquors are worth double in Canada what they are here. We ask credit for a little common sense on this subject.

The act of 1821 was repealed by the act of 1831, so that the case cannot stand. This is clearly Mr. Conklin's opinion. Act 1821 (3 Stat. 616); Act 1831 (4 Stat. 487, § 3); Conk. Pr. 327, 330, 331. The foregoing argument was prepared on the original libel, which was founded on section 1 of the act of 1821. Since then an amended libel has been filed, containing a count on the same section of the act of 1821, and a second count on section 50 of the act of 1799 (1 Stat. 665). It becomes necessary, therefore, to say something on this latter count. We insist that the case does not come within the letter or spirit of the act of 1799. That statute does not contemplate a mere transit of goods which chanced to be temporarily in the waters of the United States, but which were not consigned or destined for the United States, and which were not landed or imported for trade, sale, or any other purpose. See authorities above cited. The act of 1799, as expressed in its title, was intended to regulate the collection of duties on imports, tonnage, &c. 1 Stat. 627. This character is imparted in every section. And it clearly did not have reference to goods not landed, not imported and not destined for the United States. The amendatory act, also, of 1821, is expressly, "further to regulate the entry of goods imported into the United States." 3 Stat. 616; Conk. Pr. 322, 320. So also the act of 1823, further amendatory, has the same title and object. 3 Stat. 729; Conk. Pr. 320. Such is the scope of all these acts, and many other like acts of congress. They all look to duties on imports, which must be regarded as their whole object. And such only must be regarded as the object of section 50 of the act of 1799, on which the second count is based. 1 Stat. 665. In construing statutes, the text, context, object, scope, and spirit must all be regarded. The unloading and delivering within the United States, without a special license from a collector, of goods brought in any ship from any foreign port or place, must, in order to constitute a forfeiture, be of goods imported, or intended for importation. A different construction would work great injustice, and cannot have been the intention of congress. Section 50. Congress meant goods imported or delivered at the port of destination, and they did not mean a mere transfer from one carrier, or one mode of conveyance to another, of goods in transit from one Canadian port to another. Such are clearly Mr. Conklin's

views. Conk. Pr. 326, 327. And I think that the course of reasoning and the authorities, before applied to the first count, apply also to the second.

WILKINS, District Judge. I regret the necessity of condemning the Fame, but the statute is imperative. The first count is based upon the 1st section of the act of 1821, and the facts clearly establish a violation of its provisions. The Fame sailed from the port of Amherstburg, in Canada, bound for Detroit, with 200 barrels of whisky, ten kegs of gin and five of brandy, all-of Canadian manufacture, and failed to deliver her manifest to the collector at Detroit, where the nearest customs office was located. The excuse is that the liquors were not intended to be imported into the United States, but were designed to be transhipped into another vessel bound to a Canadian port. Of this intention I have no doubt; yet the master was bound to deliver his manifest when lying at or off the port. Such merchandise was subject to duty, had an importation been intended, and from the "Report Outwards," signed and verified by the master at Amherstburg, it appears the vessel was consigned to Detroit. As no other destination is mentioned for the liquors, they must be presumed to have been consigned to the same place. Foreign liquors are subject to duty; and although this freight was clearly intended elsewhere, yet such intention proved by oral testimony, contrary to the ship's papers, cannot be admitted as an excuse for a palpable violation of the statute. It would open the door to a vast amount of fraud upon the revenue.

But had I any doubt as to the 1st count, the second is sustained beyond all question. The cargo is of greater value than $400, and the proofs establish the fact that she was unladened within the United States, at midnight, without license or permit. I say unladened, for the steamer Ploughboy was lying at the dock at Port Huron, where the Fame transhipped her cargo. It is contended that this transhipment is not an unlading within the meaning and spirit of the 50th section of the act of 1799. It is true the cargo was not landed in the literal sense of the word—i.e., placed on shore—but it was taken from one vessel to the other while both were in port. This was clearly a landing within the intent of the statute, which was designed to prevent frauds upon the revenue. It was easy for the master to procure a permit, and thus save his owners from this prosecution. But the court cannot make the law bend to the convenience of masters. Decree of condemnation.

NOTE. For definition of importing and entering a port, see the following recent English cases: The Bahia, Brown & L. 61; The Pieve Superiore, 2 Asp. 162; The Ironsides, Lush. 438; The Danzig, Brown & L. 102; The Patrie, L. R. 3 Adm. & Ecc. 437, 439.

[1] {Reported by Hon. Henry B. Brown, District Judge, and here reprinted by permission.}