

Case No. 6,678.  
[2 Gall. 48.]<sup>1</sup>

THE HOPE.

Circuit Court, D. Massachusetts.

May Term, 1814.

CUSTOMS DUTIES—FORFEITURE—KNOWLEDGE OF MASTER—NON-IMPORTATION ACT.

1. The master of a ship is not a competent witness in an information in rem for a forfeiture occasioned by his misconduct. See *Dunl. Adm. Prac.* p. 248, c. 10.

[Cited in *The Boston*, Case No. 1,673; *The Nymph*, Id. 10,389; *McKinney v. Neil*, Id. 8,865; *The Peytona*, Id. 11,058; *Patten v. Darling*, Id. 10,812.]

2. Circumstances of presumption of master's knowledge of illegal goods being on board.

[Appeal from the district court of the United States for the district of Massachusetts.

[This was a libel by the United States against the schooner Hope (Ritchie and Carson, claimants), for having imported and concealed on board goods of British manufacture, contrary to the existing non-importation laws. The district court entered a decree in favor of the claimants, and the United States appealed.]

G. Blake, for the United States.

E. Rockwood, for claimants.

STORY, Circuit Justice. The schooner Hope has been seized, as forfeited for a violation of the sixth section of the non-importation

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act of March 1, 1809, c. 91 [2 Story's Laws, 1114; 2 Stat. 528, c. 24]. From the evidence it appears, that in the latter part of the year 1812, the schooner was captured on a voyage to Spain, carried into England for adjudication, and there finally restored. She afterwards sailed from England, apparently without any cargo, having passengers on board, who had been prisoners of war, and arrived at Boston in August, 1813. On her arrival, she was reported as in ballast, and her manifest contained no statement of any British merchandise being on board. On search, however, in the cabin, under the berths of the master and mate, divers goods of British manufacture were found concealed, which were seized, and, no claim having been interposed therefor, the same have since been condemned and sold for about \$1890. At the time of the seizure some of these goods were claimed by the master as his own property and some as the property of the mate and passengers. The goods claimed by the master were found in the same places, where the others were concealed, and the rule must apply, *noscitur a sociis*. It is an almost necessary presumption, that the master knew, where his own goods were; and if so, it is extremely difficult to suppose him ignorant of the concealment of the other packages. It was his duty to exercise every diligence in order to avoid involving the ship in the severe penalties imposed by law upon illegal importations. If these goods had been concealed in unusual places, to which the master might not be supposed to have had ordinary access, there might be some color for asserting his ignorance of the contents of the other packages. But here the very goods claimed by himself have been abandoned on account of their illegal character, and the other packages must, in a mind not wilfully blind, have attracted the strongest suspicions. The master had a right to know their contents, and being put upon inquiry by circumstances calling loudly for it, I must presume that he had full knowledge of the illegal character of the packages, and meant to take upon himself the peril of detection.

I regret, that I cannot see this case in the same favorable light, as the district court. The owners of the schooner do not appear to have had the slightest connexion with this illegal traffic: and it is unpleasant to visit upon them the penal consequences of acts, in which they took no part. But I cannot bend the rules of law to cases of individual hardship. My duty leads me through a harsh and narrow path; but I have the consolation to know, that another avenue is open to a department, which has the power to temper the severity of the law, and yield relief to innocent sufferers. It has been intimated, that if the court should be of opinion, that the master is a competent witness, and would indulge the parties with an opportunity, his testimony could be procured, to prove his ignorance of the illegal merchandize being on board. But even if competent, I cannot say, that the naked denial of the master, standing (as it should seem) in *vinculis*, could outweigh the other strong circumstances of the case. How could the master be believed, if he should deny his knowledge of his own adventure? I am, however, of opinion that in this case the master is not a competent witness. He is called to exempt the ship from a forfeiture, occasioned

by his own illegal conduct. He has therefore a direct interest in the event of the suit; and the decree of condemnation would be good evidence in a suit brought against him by his owners. The better opinion in the authorities, in my judgment, supports this doctrine. Fuller v. Jackson, Bunb. 139; Spong v. Fasting, Id. 203. Vide, also, Green v. New River Co., 4 Term R. 589; Bird v. Thompson, 1 Esp. 339; Rickson v. Sandforth, Bunb. 139, note; Taylor v. McVicar, 6 Esp. 27. I reverse the decree of the district court and adjudge the schooner Hope and appurtenances to remain forfeited to the United States.

<sup>1</sup> [Reported by John Gallison, Esq.]