

Case No. 7353.
[3 Ben. 251.]¹

THE JOHN J. WILTSIE.

District Court, S. D. New York.

May, 1869.

MASTER—FAILURE TO EXHIBIT ENROLMENT.

Where a canal-boat was not enrolled or licensed, and had no documents, *held*, that the failure of the master to exhibit such enrolment or license when demanded, did not subject the vessel to the penalty provided by the 13th section of the act of February 18, 1793 (1 Stat. 309).

This was an information, filed in behalf of the United States against a canal-boat, to recover a penalty for the failure of her master to exhibit to the proper officer of the revenue an enrolment or license, when demanded. It was admitted that the vessel had not taken out any enrolment or license, and that the master could not exhibit any enrolment or license, when the demand was made.

E. Pierrepont, Dist Atty., for the United States.

O. Frisbie, for claimants.

BLATCHFORD, District Judge. As it is admitted, in this case, that the canal-boat was not enrolled or licensed, and had no documents to exhibit to the officer, there was no violation of the thirteenth section of the act of February 18, 1793 (1 Stat. 309), on the part of the master of the boat, in not exhibiting an enrolment or license to the proper officer. The information does not allege that the vessel was enrolled or licensed, nor does it allege that the vessel was not enrolled or licensed. It merely alleges that the vessel was required to be enrolled and licensed, and that there was a violation of the said thirteenth section, by the neglect and refusal of the master to exhibit the enrolment and license of the vessel. The thirteenth section was intended to inflict a penalty only for the failure of the master of the vessel to exhibit the enrolment or license of the vessel, when required to do so, provided the vessel had taken out, in fact, an enrolment or license. The section provides, "that it shall be lawful, at all times, for any officer concerned in the collection of the revenue, to inspect the enrolment or license of any ship or vessel, and, if the master of any such ship or vessel shall not exhibit the same, when thereunto required by such officer, he shall pay one hundred dollars." By the provisions of the eighth section of the act of July 18, 1866 (14 Stat. 180), where the master of a vessel is subject to a penalty for a violation of the revenue laws, the vessel is holden for the payment of the penalty, and may be seized and libelled therefor. A failure to exhibit an enrolment or a license, under the thirteenth section of the act of 1793, presupposes that the document has been taken out by the vessel. The penalties for trading with a vessel without her being enrolled and licensed, are inflicted by the sixth section of the act. There are no allegations in the information founded on any violation of that section. The information is dismissed.

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