

Case No. 8,090.
[1 Gall. 55.]¹

THE LARK.

Circuit Court, D. Massachusetts.

May Term, 1812.

SHIPPING—PUBLIC REGULATIONS—COASTING ACT.

“Foreign voyage;” in the 8th section of the coasting act, 18th February, 1793, c. 8 [1 Stat. 308], means a voyage intended to some place within the jurisdiction of a foreign country, or at least without the territorial waters of the United States.

[See *The Atlantic*, Case No. 621.]

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

The LARK.

This was an information against the sloop Lark and cargo, for an alleged violation of the laws of the United States.

G. Blake, for the United States.

S. Dexter, for claimant.

STORY, Circuit Justice. It is agreed by the parties, that the facts of the case are truly stated in the decree of the district court. By that decree it appears, that the sloop, being a vessel usually employed in Boston Bay in the transportation of ballast, and under bond as such, was about 1 o'clock, p. in., on the 23d July, 1808, found at anchor, near George's Island, in Boston Harbor, by an officer of the revenue cutter. On going on board, a quantity of flour was found lying in apparent disorder, and an anonymous paper was found in [Christ.] Courtney's trunk, containing directions to proceed and meet a certain vessel described in the paper, which would be seen with certain signals, sailing in a line between Plymouth and Cape-Ann light-houses, to which he was to deliver his cargo. The flour had been taken in at Goldsborough's wharf, at the northerly part of Boston, about 6 or 7 o'clock on the preceding evening. The Lark passed the fort between 9 and 10 o'clock in the forenoon of the 23d, by showing a signal, correspondent with an arrangement previously made with the officers commanding at the fort, to save the claimant the inconvenience of exhibiting his pass, whenever he passed the fort. On the 26th of July, 1808, the same revenue cutter, being in the bay, saw and spoke with a vessel, called the Reuben and Rachael, of Halifax, Nova Scotia, which had cleared from Boston for Halifax a few days before, and which answered the description of the vessel mentioned in the paper found in Courtney's possession.

The sloop and her cargo were seized, and are now libelled: 1. For departing from the port of Boston, without a clearance or permit, contrary to the 3d section of the act of January, 1808, c. 8, which allegation is very properly on the evidence abandoned, as the schooner was found within, and had not departed from, the port of Boston. 2. The vessel is libelled for proceeding on a foreign voyage, being a licensed vessel, without giving up her enrolment and license, and without being duly registered, "contrary to the law;" and the second allegation is founded on the 8th section of the coasting act, 18th February, 1793, c. 8. 2 Folwell's Laws, 168 [1 Stat. 308].

It is said by the counsel for the claimant, that to proceed on a foreign voyage within the act must mean a voyage to a foreign port or country, or at least out of the domestic waters of the United States; and not merely a sailing to meet another vessel within the territorial jurisdiction of the United States, and there delivering a cargo. On the other hand, the attorney for the United I States contends, that "foreign voyage" is used in the act in contradistinction to domestic voyages in the coasting trade or in the fisheries, and that all other voyages are foreign. I am satisfied however, that the act means, by a foreign voyage, a voyage intended to some place within the limits or jurisdiction of a foreign

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country, or at least without the territorial jurisdiction of the United States. Upon the facts therefore there is no forfeiture. I would also observe that the libel is informal, and ought to have been amended, and I should have required it to have been done, before the United States should have had judgment, that the goods remain forfeited. There is no allegation of a breach against the form of the statute; “contrary to law” means no more, than “contrary to the common law.”

As however I have no doubt of a fraudulent intent, I shall certify that there was reasonable cause of seizure. Decree affirmed.

¹ [Reported by John Gallison, Esq.]