Case No. 12,044.

THE ROSE.

{1 Gall. 211.}[1]

Circuit Court, D. Massachusetts. Oct Term, 1812.

NON-INTERCOURSE—FORFEITURE—NEUTRAL GOODS.

Goods of British manufacture, imported from a neutral country into the United States, are forfeited under the act of 1st March, 1809 {2 Stat 529} c. 91, notwithstanding they have become incorporated into the general stock of such neutral country. See U. S. v. Mann {Case No. 15,718}. Condemnation on the facts.

The information alleged, that sixty casks of rum, being of the growth, produce and manufacture of a colony or dependency of Great Britain were, at Matanzas, with the knowledge of the owner and master of the brig, laden and put on board thereof, with intention to import the same into the United States, and were afterwards actually imported into the United States, to wit, at Boston, contrary to the act 1st March, 1809 {2 Stat. 529} c. 91, and the act 2d March, 1811 {2 Stat 651} c. 96. It was admitted that the brig came from Matanzas, in the island of Cuba, with the said casks of rum on board, and arrived at Boston about the 1st of August, A. D. 1811. At the trial, the main controversy turned upon the questions, whether the rum was of British origin; and, if so, whether the master or owner had knowledge thereof. The evidence introduced by the government came from very skilful and experienced witnesses, who declared, that they had tasted and examined, indiscriminately, a considerable portion of the casks composing the cargo, and, excepting three or four casks of an inferior quality, they were satisfied that it was rum of the British West India islands. They further stated, that the flavor of English island rum differed essentially

from that of the other colonies, and was as easily distinguishable from Spanish rum, as Madeira from claret wine; that they were well acquainted 1177 with Spanish rum, which was of a very inferior character; hut as that rum was not suited for the American market, and little or none had been imported for ten or twelve years last past, they could not speak positively, whether its quality had latterly been improved, or not; but they entertained no doubt that this cargo was of British origin. The evidence, on the part of the claimants {William P. Salter and others}, consisted chiefly of testimony, to prove that of late years there had been great improvements made in Spanish rum, but that it was rarely or never voluntarily sent to the United States, and was usually sent to South America, or the coast of Africa; that some of the rum lately made in Cuba was equal to Jamaica rum; but in general its quality was very inferior; that perhaps it would not be easy to procure there a cargo of sixty or seventy hogsheads of rum equal to that of Jamaica; that since the non-intercourse act of 1809, vessels frequently came with rum from the British islands to Cuba, but they usually brought but small quantities, as ten or twenty hogsheads. The claimants, although the object of the government in examining the rum was not concealed from them, offered no testimony of any witnesses who had tasted any of the cargo, except the three or four hogsheads above alluded to, and these witnesses concurred in their opinions with those of the government; and indeed had been requested to taste the rum by the collector of the port. There was some evidence introduced as to other collateral facts, which it is not necessary to notice, because it did not affect the decision.

William Prescott, for claimant.

G. Blake, for the United States.

STORY, Circuit Justice. Taking the whole evidence together, I cannot resist the impression, that this was

rum, the produce of a British West India island. It has been said that nothing is more uncertain than the taste, and that it would be harsh to found a decree upon its decisions; but I do not yield to the suggestion. The taste may, nay on many occasions must be, as good and safe a criterion as the eye. Sweet and sour, bitter and mild, are almost universally distinguishable, and flavor may be no less certain. Here is a witness of great respectability, who testifies that he has been employed nineteen years in the customs to examine spirits and liquors, and he declares that he can readily distinguish the various kinds, and, to use his own words, as readily as claret from Madeira wine, or as bohea from green tea. Besides, our revenue laws are predicated upon this supposed distinction of the different kinds of wine; nay, even of the different qualities of the same wine, for they pay different duties; yet it is chiefly by the taste that they can be classed and discriminated. Act 10th Aug., 1790 [1 Stat. 180] c. 39, § 1. In the present case, I am asked to set aside solemn testimony by conjecture; to declare doubts, where the evidence, if believed, presents none. Now if this rum had been so questionable in taste, why was it not examined and tasted by persons of skill on the part of the claimants? There is not a shadow of evidence to show that any person would have doubted as to the quality of this rum; and when the claimants have not offered any such testimony to relieve the case, I think myself bound to believe that none could be produced. But it is said, that there is no evidence that the master or owner had any knowledge that this rum was of British origin. But, if I believe the testimony of the claimants, such rum was frequently introduced into Cuba. Perhaps prima facie, an article imported from a country where that article is known to be manufactured, is to be presumed to have been of domestic manufacture; but considering the present state of the commercial world, I think even this

presumption is but slight; and it is certainly removed by evidence of the free introduction of the same article of a foreign manufacture. At the time when the present cargo was purchased, I must presume, in the absence of all other evidence, that it was examined by the master. As it is proved to be of English origin, I must presume that he could distinguish its quality, since it has been proved to be easily distinguishable. This presumption is not conclusive, but it throws the burthen of the contrary on the claimants. They can rebut it by showing the time, manner, price, and circumstances of the purchase. They could introduce evidence to show its domestic origin, or at least trace its history so far as to create a reasonable doubt, which would repel the imputation of knowledge. They have not so done; and I am bound to believe, therefore, that it cannot be done. The statutes of this country must be considered as known to the citizens; and although the law will not presume a criminal violation of duty, yet, in these cases, it requires diligence and good faith on the part of the merchant. If he will fully shut his eyes against the light; if he will not inquire, though circumstances present calling for inquiry; it is at his peril. When the goods are shown to be of foreign growth or manufacture, he cannot disclaim knowledge, unless he shows facts and circumstances, from which his ignorance may be fairly inferred. I think in this case the presumption of knowledge is violent It has been further insisted, that the act was never meant to be applied to foreign articles, which had been incorporated with the common stock of the country; and that the rum in this ease ought to be considered as so incorporated But I see no such limitation in the statute. The words are, "nor shall it be lawful to import into the United States, or the territories thereof, from any foreign port or place, any goods, &c. being of the growth, produce or manufacture, &c. of Great Britain or Ireland, or of any of the colonies

or 1178 dependencies of Great Britain;" and I do not feel at liberty to narrow the construction of language so clear and decided. If indeed the argument were admitted, the act might as well be erased from the statute book; for as to effective purposes, it would be nugatory and idle. I must therefore reverse the decree of the district court, and condemn the property with costs to the United States. Condemned.

[1] {Reported by John Gallison, Esq.}