Case No. 12,104.

THE RUBY.

{5 Mason, 534.}[1]

Circuit Court, D. Maine. Oct. Term, 1830.

SEIZURE—BONA FIDE PURCHASERS—ADMISSIONS OF FORMER OWNERS.

1. The declarations and admissions of the original owners of a vessel, not a part of the res gestae, but containing a mere narrative or admission of pre-existing facts and occurrences, tending to establish a forfeiture, are not evidence against subsequent bona fide purchasers of the vessel.

2. Doubtful circumstances, which the original owners might explain, if claimants, do not press as heavily against bona fide purchasers, who are not presumed to be conversant of them.

{Appeal from the district court of the United States for the district of Maine.}

This was a libel of seizure of the schooner Ruby, for an asserted forfeiture under the coasting act of 1793, c. 52. The libel contained two counts, or allegations. The first alleged, that the Ruby being, in 1824, a vessel duly enrolled and licensed for the coasting trade, was engaged in a trade other than that for which she was licensed (section 32); the second alleged, that while she was so licensed, she proceeded on a foreign voyage, without first giving up her enrolment and license (section 8). The claimants {Asa Woodberry and others}, in their claim and answer, asserted themselves to be bona fide purchasers of the Ruby, for a valuable consideration, without notice of any forfeiture, and denied the allegations of the libel. A decree of acquittal was pronounced in the district court {case unreported}, from which an appeal was taken by the United States, to the circuit court.

[For a hearing on a motion to introduce newly discovered evidence, see Case No. 12,103.]

The cause was argued at this term upon the evidence taken by the parties, by Shepley, district attorney, for the United States, and by C. S. Daveis, for the claimants. It turned principally upon questions of fact. There was much new testimony taken since the appeal.

STORY, Circuit Justice. This cause comes before the court upon the claim of bona fide purchasers for a valuable consideration without notice, at a considerable distance of time, and after many intermediate voyages, since the asserted offences were perpetrated. Under such circumstances, the court is in the habit of requiring somewhat stronger evidence to inflict the penalty of forfeiture, than it ordinarily does require, where the original owners are before the court, who may be presumed to be conversant of all the transactions. If the evidence bears against the innocence of the vessel, and yet has some imperfections and infirmities, the case will stand less favourably in respect to the original owners, than in respect to bona fide purchasers; for the former have it in their power to explain many doubtful circumstances, of which the latter may be presumed to be in utter ignorance. Those circumstances, therefore, press less hardly against the latter, than the former. If the owners may explain, but do not, their silence of itself becomes significant. It affords a corroboration of all the unfavourable conclusions, which the actual posture of the evidence justifies. And in proportion as time has intervened since the asserted transgression, the difficulty of removing apparent incongruities is presumed to increase, since it throws into obscurity many of the means of explanation. Not to yield to such considerations on the part of the court, would be to resist the ordinary results of human experience, to seek an ocasion to inflict forfeitures, rather than to

indulge those presumptions of innocence, which the law throws round the party for his protection against oppression and fraud.

There is another point, suggested by the circumstances attendant upon this case, which is of a good deal of practical importance, and may affect the security of the title of purchasers in no inconsiderable degree. The declarations, and oral admissions of the original owners, have been sprinkled by the testimony with a somewhat uncommon frequency over this record. The question is, how far such declarations and admissions as to past facts and occurrences are evidence against bona fide purchasers. It is obvious, that if these declarations and admissions are evidence against purchasers at all times, and in all circumstances, in the same manner and to the same extent, as if the original owners were now sole litigants before the court, there can scarcely be any security to any derivative title. Purchasers will be in imminent peril, not only from offences, but from confession of offences, which may be imaginary and collusive, as well as real and true. On this subject, I am of 1301 opinion, that the rule of law is, that the declarations of the owners of the vessel, so far as they constitute a part of the res gestae, at the time of the asserted offence, are evidence against all subsequent claimants. But declarations made after the res gestae and constituting in no just sense a part thereof, or which contain a mere historical narrative or admission of pre-existing facts, although made by them while they were yet owners of the vessel, are not evidence against bona fide purchasers. In their nature they are mere hearsay, the declarations of third persons not under oath, and ought not to bind the rights or interests of innocent parties. I shall accordingly reject all that portion of the testimony, which states declarations or admissions of the original owners, not falling within the rule above stated.

Having disposed of these considerations, which present a view of legal principles, I shall now proceed to a review of the facts, keeping in mind the general doctrine, that this is not a case where by statutory regulations, the onus probandi is thrown upon the claimants.

The judge here reviewed the evidence, and decided, that the forfeiture was not proved; and he accordingly affirmed the decree of the district court, but directed that a certificate be entered that there was reasonable cause of seizure. Decree affirmed.

[1] {Reported by William P. Mason, Esq.}