

29FED.CAS.—24

Case No. 17,249.

THE WASP.

{1. Gall. 140.}¹

Circuit Court, D. Massachusetts.

May Term, 1812.

FORFEITURE OF VESSEL—INTERDICTED PORTS.

A vessel sailing to an interdicted port, unless by permission of the president, on the public service, was liable to forfeiture, under the 3d section of the act of June 28, 1809, c. 9 [2 Stat. 550]. Under the same act British ports were permitted ports.

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

{This was a libel against the brig Wasp, Foxwell Cutts and others, claimants. The case was brought in the district court for the violation of the act of congress of June 28, 1809, and the vessel was condemned. Case unreported.}

G. Blake, for the United States.

R. G. Amory, for claimants.

STORY, Circuit Justice. The libel contains two counts, founded on the 3d section of the act of 28th June, 1809, c. 9. The first count alleges, that the brig departed from Charleston in South Carolina, with a

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cargo, to an interdicted port, to wit, Liverpool in Great Britain, without a clearance for said port. The second count alleges that the brig departed from said Charleston, with a cargo on board, for a permitted port to wit, Liverpool in Great Britain, without giving bond as required by the act aforesaid. It appears, that on the 16th of March, 1810, the brig, having a full cargo of cotton on board, cleared out from Charleston, South Carolina, bound for Boston; and after her departure, proceeded to Liverpool, and there discharged her cargo. The only testimony in the case is the mate's, and he alleges no distress of weather, or other excuse, for the voyage to Liverpool; I must therefore take it for true, that the original destination was for Liverpool. It is contended on behalf of the claimants, that Liverpool was, by virtue of the president's proclamation of 9th August, 1809, an interdicted port, and consequently there could be no forfeiture under the 3d section for such a voyage. Now admitting that Liverpool was an interdicted port, I incline to think that on a careful examination of the 3d section it will be found to cover the case. That section prohibits the departure, of any vessels to an interdicted port, except such as by the president's permission should proceed thereto on the public service; and also prohibits the departure for a permitted port, without giving bonds not to proceed to an interdicted port during the voyage. Then comes a declaratory clause, that "if any ship or vessel shall, contrary to the provisions of this section, depart from any port of the United States, without clearance, or without having given bond in the manner above mentioned, such ship or vessel, together with her cargo shall be wholly forfeited," &c. Now it seems to me, that a departure on a voyage "without clearance," in this section, must mean a clearance for the foreign voyage, on which the vessel is destined; and if it be a foreign voyage to an interdicted port, it is contrary to the provisions of the section, unless authorized by the president of the United States. But by the decision of this court in the case of *The Orono* [Case No. 10,585], it is established, that the proclamation of the 9th August, 1809, did not revive the non-intercourse as to Great Britain, and consequently Liverpool, at the time of the sailing of the brig, was a permitted port. Not having given bond, as the act required, the brig must therefore be condemned.

Decree affirmed, with costs.

¹ [Reported by John Gallison, Esq.]