

THE HAYTIAN REPUBLIC.

UNITED STATES v. THE HAYTIAN REPUBLIC.

(District Court, D. Oregon. August 8, 1893.)

No. 3,403.

1. ADMIRALTY PLEADING—EXCEPTIONS TO LIBEL—WAIVER OF OBJECTIONS.

Where, after the argument of exceptions to a libel, a brief is filed, in which, for the first time, the point is made that the facts set up in the exceptions cannot be thus raised, but are available only by answer, the court will consider the questions presented upon the assumption made by both parties in the argument, that such facts were properly presented, without determining the technical question of pleading.

2. ADMIRALTY PRACTICE — BREACH OF REVENUE LAWS — BUT ONE LIBEL FOR SEVERAL OFFENSES.

The United States is entitled to but one decree of forfeiture against a vessel for several past violations of the revenue laws, and where a vessel has been once libeled for several such violations, and released on bond, she is not thereafter subject to a second seizure for alleged violations committed during the same period as those for which she has already been seized. *The Langdon Cheves*, 2 Mason, 59, distinguished.

3. SAME—AMENDMENT OF LIBEL—DISCOVERY OF NEW OFFENSES.

The United States, upon finding evidence of violations of the revenue laws committed by a vessel during the same period as those for which she has already been libeled, may avail themselves of such discovery by amending the libel.

4. SAME—ILLEGAL RELEASE BOND—NEW LIBEL.

Where a vessel libeled for violation of the revenue laws is released upon a bond of doubtful legality, the United States cannot maintain a second libel for other violations of the revenue laws, committed during the same period as those for which the first libel was filed, without dismissing the first proceeding.

5. SAME—RELEASE BOND—VALIDITY.

A release bond for a vessel seized for violation of the revenue laws, which contains no condition, and is for double the value of the vessel as if drawn under Rev. St. § 941, is valid, under section 938, as an obligation to pay at least the value of the vessel, since the condition is contained in the statute.

6. SAME—CRIMES—LANDING CHINESE LABORERS.

In a libel by the United States against a vessel for breach of the revenue laws, an allegation that her master attempted to land Chinese laborers at a port of the United States does not charge a crime.

7. SAME—MATTER PLEADED IN ABATEMENT—PRIOR SEIZURE IN ANOTHER DISTRICT.

A seizure of a vessel for violations of the revenue laws, and her release on bond, may be pleaded in abatement of a subsequent libel in another district for similar offenses committed during the same period as those for which the first libel was filed.

In Admiralty. Libel by the United States against the steamer Haytian Republic for breach of the revenue laws. Heard on claimant's exceptions to the libel. Exceptions sustained.

John M. Gearin, Sp. Asst. U. S. Atty.

C. A. Dolph, W. H. Gorham, and O. F. Paxton, for claimant.

BELLINGER, District Judge. On May 28, 1893, the steamship Haytian Republic was seized at Seattle, in the district of Washing-

ton, as forfeited to the United States for violations of the revenue laws alleged to have been committed at various times between July 28, 1892, and the date of seizure. Subsequently, the vessel was released on the bond of the claimant, in double the amount of her appraised value. Thereafter, in July last, the vessel was again seized for a number of other alleged violations of the revenue laws, committed during the same period of time covered by the former charges, at dates extending from July, 1892, to January 27, 1893, and including, also, two charges of violations of the same laws, alleged to have been committed since the release from arrest at Seattle, the latter seizure being made in this district.

The claimant filed exceptive allegations to the several articles in the libel and amended libel, relating to alleged offenses committed prior to the arrest and release at Seattle, setting out particularly the proceedings had in the district court for Washington, and submitted with these exceptions a certified transcript of the record of such proceedings. The ground of these exceptions is that the United States, having taken a bond from the claimant in the full appraised value of the vessel on the former arrest, and having released her from such arrest, cannot have recourse again to the vessel, except for offenses committed since such release.

The point is made for the first time in the brief filed since the argument, in support of the libel, that the facts set up in the allegations cannot be raised on exceptions, but are available to the defendant by answer only. In admiralty, exceptive allegations correspond to pleas in abatement and special pleas in bar. A party may set up a single fact in an exceptive allegation, or he may unite the whole, answering as to all the facts, in an answer. Ben. Adm. § 368. The usual course is to set up all matters so relied upon in an answer. The exceptive allegations are, in effect, a special answer. It is immaterial what name is given to them. Courts of admiralty disregard mere technicalities. The circumstances of the case make it important, both to the government and the claimant, that the matters involved in this controversy be speedily determined. I shall not consider whether the facts alleged in an exceptive allegation must be technically within the knowledge of the court, but shall consider the questions presented by the exceptions upon the assumption made by both parties in the argument, that the facts alleged are proper to be considered by the court in the mode in which they are presented.

It is claimed in support of the libel that, when the claimant secured the release of the vessel upon the bond for her appraised value, he took it subject to all existing liens, and cases are cited which abundantly sustain that view. That there is no distinction as to this between cases where the vessel is held for forfeiture, and other cases, is shown in the case of *The Langdon Cheves*, 2 Mason, 59, where, in a proceeding of condemnation and forfeiture, the vessel was delivered on bail for the appraised value, and after a final decree of condemnation the amount of the appraised value was paid into court. Afterwards, the question arose as to whether