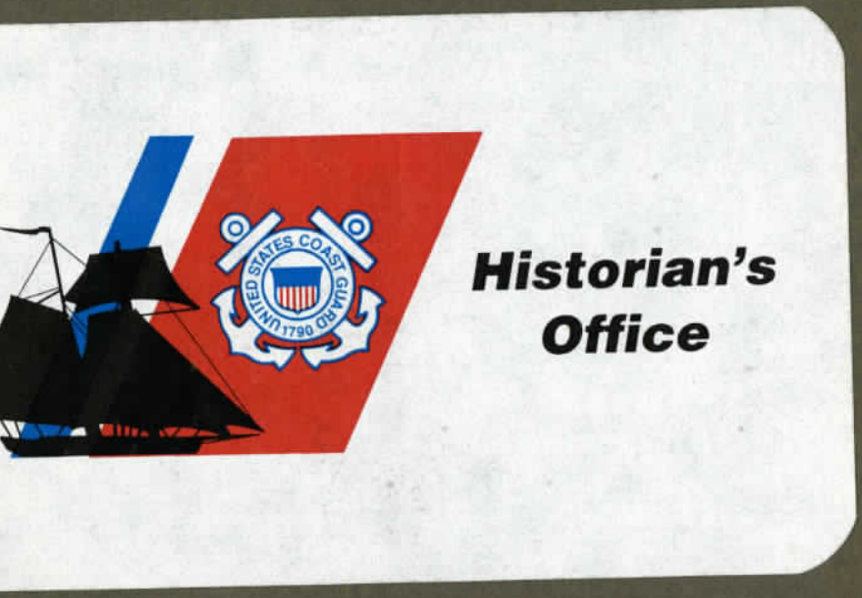

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TREASURY DEPARTMENT, WASHINGTON, D. C.

Law Enforcement at Sea

relative to

Smuggling

UNITED STATES COAST GUARD - - - 1932

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TREASURY DEPARTMENT

UNITED STATES COAST GUARD

LAW ENFORCEMENT AT SEA

RELATIVE TO

SMUGGLING

UNITED STATES
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TREASURY DEPARTMENT,
UNITED STATES COAST GUARD,
Washington, March 1, 1932.

The following notes on the authority of the Coast Guard relative to law enforcement at sea in time of peace are published for the information and guidance of the service.

F. C. BILLARD, *Commandant.*

II

JURISDICTION OVER VESSELS

Vessels are generally classed as public and private. Public vessels are those owned by a government or used by the government for either war or peace-time activities; private vessels consist of merchant vessels and yachts.

All public vessels are accountable for their actions only to the government to which they belong, whether they are in their own home waters, on the high seas, or in the territorial waters of another nation, with the exception that they are subject to certain local regulations, such as place of anchorage, dumping of ashes, etc., and with the further exception that their officers and crews are subject to local jurisdiction when on shore. They may, however, be denied the right to enter harbors of nations foreign to them. Public vessels, being thus accountable, are not to be considered as coming within the purview of boarding instructions issued by the Coast Guard.

The United States has complete jurisdiction over its private vessels[1] within its own waters and upon the high seas, for a private vessel is held to possess to a degree the territorial status of the nation whose flag it flies. However, the fact that a sovereign has the right to seize a ship flying its own flag on the high seas does not in itself authorize any citizen or agent of that power to do so without appropriate legislation, and accordingly Congress has specifically empowered the Coast Guard to board and search all vessels within 4 leagues (12 miles) from the coast of the United States and to use the necessary force in compelling submission thereto. (Sec. 581, tariff act of 1930.) Beyond the 12-mile limit officers of the Coast Guard are authorized, by virtue of R. S. 3072, to seize on the high seas American vessels subject to forfeiture for violation of any law respecting the revenue. (See 274 U. S. 501.) This act is as follows:

R. S. 3072. It shall be the duty of the several officers of the customs to seize and secure any vessel or merchandise which shall become liable to seizure by virtue of any law respecting the revenue, as well without as within their respective districts.

Referring to this act Mr. Justice Brandeis, in delivering an opinion of the Supreme Court in the case of United States *v.* Lee (May 31, 1927), said: "From that power it is fairly to be inferred that they (officers of the Coast Guard) are likewise authorized to board and search such (American) vessels when there is probable cause[2] to

[1] Vessels registered pursuant to law and no others, except such as shall be duly qualified according to law for carrying on the coasting or fishing trade, shall be deemed vessels of the United States and entitled to the benefits and privileges appertaining to such vessels; but no such vessel shall enjoy such benefits and privileges longer than it shall continue to be wholly owned by a citizen or citizens of the United States or a corporation created under the laws of any of the States thereof and be commanded by a citizen of the United States. And all the officers of vessels of the United States who shall have charge of a watch, including pilots, shall in all cases be citizens of the United States. (R. S. 4131, May 28, 1896.)

[2] Definition of probable cause: "If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient." (Stacey *v.* Emery, 97 U. S. 642, 645.)

believe them subject to seizure for violation of revenue laws, and to arrest persons thereon engaged in such violation. * * * The authority asserted is not as broad as the belligerent right to visit and search even without probable cause. (Compare the *Marianna Flora*, 11 Wheat. 1, 42.)" Officers of the Coast Guard who may be called upon to decide whether or not an American vessel shall be boarded more than 12 miles from the coast of the United States, and whether or not force shall be used in compelling such compliance, should first familiarize themselves with the decisions and opinions of the Supreme Court in the cases of Maul *v.* United States and United States *v.* Lee, both of which are included herein under "Extracts from Important Supreme Court Decisions."

When an American vessel enters foreign territorial waters it becomes almost wholly subject to the jurisdiction of the country whose waters are entered. Officers of the Coast Guard shall never board any vessel within the territorial jurisdiction of another power.

A foreign private vessel, in a harbor or bay of the United States, is subject to the operation of the civil and criminal laws of the United States. Ordinarily, however, the internal discipline and customs of the ship are not interfered with unless a law of the port is violated, or the disorder is of such a nature as to disturb tranquillity on shore, or when a person not a member of the crew is concerned. Petty criminal offenses and disputes are generally yielded to the authorities of the country to which the vessel belongs. On the other hand, an offense of such gravity that it would awaken public interest on shore when it becomes known there and one deserving of severe punishment would be dealt with by the local courts.

Boarding officers have full authority to board private foreign vessels in our harbors and bays, but because of the international aspect great care and discretion should be used in exercising control over foreign shipping, especially where escape is improbable, and where the vessel is recognized as belonging to a responsible owner or corporation. It has been held by the United States that the firing of a solid shot at a passenger vessel for the sole purpose of compelling her to show her flag, or the attempt to arrest an occupant by means of a force imperiling the lives of innocent persons, is an arbitrary action calling for disavowal by the nation whose authorities had recourse to it. (Mr. Gresham, Secretary of State, to Mr. Huntington, December 30, 1893.)

The territorial waters of the United States comprise all waters extending 3 miles from the mean low-water contour of the coast and all waters inshore of the lines designated and defined by the Secretary of Commerce in accordance with the act of February 19, 1895, as limiting the "inland waters" of the United States. Where bays and estuaries are involved which are not more than 20 miles in width, headland to headland, the "coast" is determined by a straight line drawn from headland to headland and tangent to them. (Regina *v.* Cunningham, Bell Crown cases, 72; Direct U. S. Cable Co. *v.* Anglo American Telephone Co., in the House of Lords, 2 App. cases, 349.)

When contiguous to the United States all rocks, shoals, and mud lumps which are bare at mean low water are considered territory of the United States, together with waters extending 3 miles from the mean low-water line. (The *Anna*, High Court of Admiralty, 1805, 5 C. Rob. 373.)

The limit of the marginal sea, as set forth above, is not fully accepted by many important nations. In framing the so-called rum treaties only 5 out of the first 12 countries signing the treaties agreed to stipulate that it was their intention to uphold the principle that 3 marine miles constituted the proper limit of territorial waters. For example, Norway claims jurisdiction for a distance of 10 miles; Sweden, 4 miles; Italy, 10 miles; and Spain, 6 miles.

Ships of all nationalities (except public vessels) are subject to the jurisdiction of the United States when they are in her territorial waters, unless they are only passing through them or have been forced to seek shelter in distress. However, "one who ranges along the land or water line of any country, with the design of aiding in the subversion of its laws, challenges that country to enforce its laws and assumes the risks of his own mistakes and the action of wind and tide and all the forces of nature." (The Pesaquid-Latham et al. *v.* The U. S., Circuit Court of Appeals, 4th circuit, No. 2206, October 21, 1924.) The extent of this jurisdiction over foreign vessels is proportioned to the degree of interest with which the territorial sovereign regards the conduct of such ships or their occupants, but in general it is not as broad or as inclusive as that exercised over a ship in a harbor. Thus, it is considered that crimes and offenses committed on board foreign ships passing through our territorial sea by persons on board them against persons or things on board the same ships are, as such, outside the jurisdiction of the United States unless they involve the violation of the rights or interests of our Government or our citizens not forming part of the crew or passengers. The United States is the judge of what violates her interests in these waters, and the right of the Coast Guard to board and search a foreign vessel within this marginal sea when there is reasonable cause to believe that the vessel is operating in violation of the laws of the United States is unquestioned.

The expression "high seas" is usually understood to comprise those waters which are outside the marginal seas of nations. With certain exceptions ships on the high seas are accountable only to the country whose flags they fly. These exceptions include piracy and trading in slaves, and any vessel found engaging in those pursuits is subject to capture and punishment by any nation. Other exceptions are to be found in laws of states and in treaties which authorize limited jurisdiction in the vicinity of the marginal sea, largely for the protection of the revenue.

Except by treaty or through operation of law the United States has no authority to visit and search a foreign vessel on the high seas in time of peace, such vessel not being of a piratical character or being engaged in the slave trade and not being pursued under the doctrine of "hot pursuit." In cases where the United States has no authority to visit and search a foreign vessel, in order to ascertain its character a vessel of the Coast Guard may approach for close inspection. No force may be used, and the vessel approached is not required to lie to.

A vessel that has violated a law of the United States in waters within its jurisdiction may be chased and captured upon the high

seas. The chase or "hot pursuit," if once abandoned, can not be resumed, but must be continued without interruption until the vessel is overtaken and seized.

Certain acts of Congress and some treaties permit a short extension of the marginal sea of the United States for specific reasons, largely for the protection of the revenue. Three of the earliest of these acts, which go back as far as 1799, are as follows:

> The officers of the Coast Guard cutters shall respectively be deemed officers of the customs, * * *. They shall go on board all vessels which arrive within the United States or within 4 leagues of the coast thereof, if bound for the United States, and search and examine the same and every part thereof, and shall demand, receive, and certify the manifests required to be on board certain vessels, shall affix and put proper fastenings on the hatches and other communications with the hold of any vessel, and shall remain on board such vessels until they arrive at the port or place of their destination. (R. S. 2760.)
>
> The cutters and boats employed in the service of the Coast Guard shall be distinguished from other vessels by an ensign and pendant, with such marks thereon as shall be prescribed by the President. If any vessel or boat, not employed in the service of the Coast Guard, shall, within the jurisdiction of the United States, carry or hoist any pendant or ensign prescribed for vessels in such service, the master of the vessel so offending shall be liable to a penalty of $100. (R. S. 2764.)
>
> Whenever any vessel liable to seizure or examination does not bring to, on being required to do so, or on being chased by any cutter or boat which has displayed the pendant and ensign prescribed for vessels in the Coast Guard, the master of such cutter or boat may fire at or into such vessel which does not bring to, after such pendant and ensign has been hoisted and a gun has been fired by such cutter or boat as a signal; and such master, and all persons acting by or under his direction, shall be indemnified from any penalties or actions for damages for so doing. If any person is killed or wounded by such firing, and the master is prosecuted or arrested therefor, he shall be forthwith admitted to bail. (R. S. 2765.)

To come within the purview of R. S. 2760 (the first of the three acts noted in the preceding paragraphs), a foreign vessel must be, first, *within the 12-mile limit*, and second, must be *bound to the United States*. It is to be observed also that it is mandatory to board such vessels, the statute stating that "they (officers of the Coast Guard) *shall* go on board * * *." Attention is here invited to article 1029, Coast Guard Regulations, as to the proper entries to be made on manifests.

Relative to the act which permits the use of force in bringing to a vessel (R. S. 2765), it is important, first, to be certain that the vessel is *liable to seizure or examination*, and, second, that the *pendant and ensign* have been hoisted and plainly seen before using forceful measures. At night these symbols of authority should be illuminated by a searchlight when necessary, although it was held in a recent case that this illumination was not always obligatory. (Florida *v.* Parry et al.) It is to be noted that a warning signal shall be given before firing into a vessel. If the usual hail is inadequate or unheeded, a blank charge may be fired; and if this is insufficient, a solid shot laid across the bow, but well clear.[1] Then, if it becomes clear that capture can not be effected otherwise a vessel may be disabled or brought to by firing into her. Care should be taken to assure as far as possible that the warning shots have been observed by the merchant vessel. (With small craft this question has been the subject of important investigation and discussion.)

In 1922 it became evident that R. S. 2760, because of its limitations, needed change, and Congress accordingly amended the act so

[1] In this connection see H. L. 18 May, 1931 (477) and H. L. 31 October, 1930 (CO 601–621).

as to provide that vessels not bound to the United States, but which hovered within 12 miles of our coast line for the purpose of transferring their illicit cargoes to small craft, would be included. This law is known as the tariff act of 1922, the relevant part of section 581 of the act being copied below. (This section is published in title 19 of the U. S. Code as sec. 481 and is cited as "19 U. S. C. 481.")

> SEC. 581. *Boarding vessels.*—Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector, may at any time go on board of any vessel or vehicle at any place in the United States or within 4 leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package on board, and to this end to hail and stop such vessel or vehicle, if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle, or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle, is liable to forfeiture, it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation.
>
> Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within 4 leagues of the coast of the United States and hail, stop, and board such vessels in the enforcement of the navigation laws and arrest, or, in the case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws. (R. S. 3061, 3072. See act March 31, 1900, p. 136.)

While this law gives the Coast Guard ample authority to enforce the provisions of our customs laws within the 4-league marginal zone prescribed by such laws, regardless of the nationality of the vessel involved, or its ultimate destination, because of the international aspect it became desirable to modify some of its provisions by treaties, and there are now in effect such agreements with the following countries:

Extraterritorial seizure treaties

Country	Date signed	Date Senate consented	Date proclaimed
Great Britain	Jan. 23, 1924	Mar. 21, 1924	May 22, 1924
Norway	May 24, 1924	June 20, 1924	July 2, 1924
Denmark	May 29, 1924	July 11, 1924	July 25, 1924
Germany	May 19, 1924	Aug. 9, 1924	Aug. 11, 1924
Sweden	May 22, 1924	Aug. 15, 1924	Aug. 18, 1924
Italy	June 3, 1924	Oct. 16, 1924	Oct. 22, 1924
Panama	June 6, 1924	Jan. 15, 1925	Jan. 19, 1925
Netherlands	Aug. 21, 1924	Feb. 26, 1925	Apr. 8, 1925
Cuba	Mar. 4, 1926	Apr. 9, 1926	June 19, 1926
Spain	Feb. 10, 1926	Mar. 30, 1926	Nov. 17, 1926
France	June 30, 1926	Dec. 30, 1926	Mar. 12, 1927
Belgium	Dec. 9, 1925	Mar. 3, 1926	Jan. 11, 1928
Greece	Apr. 25, 1928	May 25, 1928	Feb. 18, 1929
Japan	May 31, 1928	Jan. 26, 1929	Jan. 16, 1930
Poland	June 19, 1930	June 28, 1930	Aug. 8, 1930
Chile	May 27, 1930	June 28, 1930	Nov. 26, 1930
GENERAL SMUGGLING TREATIES			
Canada	June 6, 1924	Dec. 17, 1924	July 17, 1925
Cuba	Mar. 4, 1926	Apr. 15, 1926	June 19, 1926

All of the extraterritorial seizure treaties provide, in substance, that the United States shall have the right—

(*a*) To board the vessels of the high contracting parties when such vessels are within a distance from our coasts which can be traversed in one hour by the suspected vessel, when there *is reasonable cause for belief* that she has committed, is committing, or attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages. In cases, however, in which the liquor is intended to be conveyed to the United States by a vessel other than the one boarded, *it shall be the speed of such other vessel* and not the speed of the vessel boarded at which the right under this article can be exercised.

(*b*) To address inquiries to those on board concerning the vessel's business.

(*c*) To demand and examine the ship's papers, and when such inquiries and examinations tend to confirm the suspicion,

(*d*) To search the vessel. If this search results in uncovering evidence by means of which the vessel may be prosecuted *under a law or laws of the United States prohibiting the importation of alcoholic beverages,*

(*e*) To arrest the vessel and take her into a port of the United States for adjudication.

The general smuggling treaty with Canada (proclaimed July 17, 1925) provides, in part:

That the appropriate officers of the Governments of the United States and Canada shall furnish each other on request information concerning clearances to vessels when there are reasonable grounds for suspecting that such vessels intend to smuggle cargo either into the United States or Canada.

The general smuggling treaty with Cuba (proclaimed June 19, 1926) provides, in part:

That clearances shall be denied vessels bound from Cuba to the United States (or vice versa), the importation of whose cargoes or aliens are prohibited in the country to which the vessel is bound, unless there has been a compliance with the requisites demanded by the laws of both countries. The treaty also provides that when one of the countries gives notice to the other that it suspects that a specified vessel in the port of the other country, although ostensibly destined to a port in a third country, is likely to attempt to introduce unlawfully in its territory either merchandise or aliens, such country in whose port the vessel may be shall require from the vessel in question a bond to produce a duly authenticated landing certificate showing such merchandise or aliens actually to have been discharged at the port for which the vessel cleared. If such a vessel fails to produce the certificate in proof of the lawful discharge of cargo or persons, the bond shall be forfeited, and thereafter for a period of five years the vessel shall be denied the right to enter or clear from either the United States or Cuba. The two countries also agree to furnish each other, when requested, the names and activities of persons or vessels which are known or suspected to be engaged in the violation of laws relating to smuggling.

Referring to the treaties relating to extraterritorial seizures within one hour's sailing distance, particular attention is invited to the clause giving the United States authority to "board vessels of the high contracting parties when such vessels are within a distance from our coasts which can be traversed in one hour by a suspected vessel, or by the intermediary vessel which may be assisting her."[3] Though this gives us a right to board beyond the 12-mile limit if the speed of the vessel boarded (or the speed of the intermediary vessel) is more than 12 miles an hour, it has been held that there is no law of the United States which may be invoked for the violation of any customs, internal revenue, or prohibition law by a *foreign vessel* at a distance greater than 12 miles, the treaty being not self-executing. Therefore, it will be useless, usually, to arrest any foreign

[3] Read carefully subparagraph a—above.

vessel beyond the 4-league limit, because, as has been stated, it has been rather well settled that these liquor treaties do not extend the laws of the United States beyond that limit, and for diplomatic reasons as well these vessels should not be arrested where it is evident that no violations of law can later be applied against them.[4]

In view of the treaties which provide that vessels of the treaty States may be boarded within a distance from our coasts which can be traversed in one hour by the suspected vessel, the boarding officer in every case of a treaty vessel encountered within 12 miles of the coasts shall satisfy himself prior to boarding, that there are reasonable grounds for believing her to be within the treaty limit.

Under certain exceptional conditions it its believed that a foreign vessel beyond the 12-mile limit who uses her own boats in transporting liquor into the United States may be properly seized under the doctrine of "constructive presence." The classic case is that of the *Araunah*. This Canadian vessel was seized in 1888 by the Russian authorities outside of territorial jurisdiction. The crew of the *Araunah* was taking fish by means of her own boats within the territorial waters of Russia off the coast of Siberia. The seizure was protested by the owners, and on behalf of the British Government Lord Salisbury said that they were "of the opinion that, even if the *Araunah* at the time of seizure was herself outside the territorial limit, the fact that she was, by means of her boats, carrying on fishing within Russian waters without the prescribed license warranted her seizure and confiscation according to the provision of the municipal law regulating the use of these waters". This doctrine appears to be good international law.

Vessels, both domestic and foreign, may be arrested within our jurisdiction for breaches of our laws committed some time prior to apprehension. In the *Panama* case, where a British vessel was proved to have previously landed a cargo many miles from the place of seizure, the court held her liable to seizure and subject to forfeiture.

A case of considerable interest and one which may clear up some obscure points is that of the British Steamer *Quadra*. (Ford et al. *v.* U. S., 273 U. S. 596), decided by the Supreme Court in April, 1927.) This was a criminal prosecution brought by the United States against the officers and crew of the British Steamer *Quadra* and against a number of other persons, all of whom were charged with conspiracy to violate the tariff act of 1922 and the national prohibition act. The vessel was seized in November, 1924, outside of the bay of San Franciso in accordance with the provisions of the British-American convention (rum treaty). A criminal prosecution was thereafter instituted in the northern district of California. The treaty was brought in issue. Mr. Chief Justice Taft, who delivered the opinion of the court, held that the seizure of the vessel was regular under the treaty; that the treaty authorized the criminal prosecution of British subjects who were arrested on a vessel so seized; that such prosecution could be based upon a conspiracy statute as well as upon the substantive criminal law prohibiting illegal importations; and that persons outside the United States who conspired with persons within to violate

[4] In doubtful cases where it is probable that an investigation will produce evidence of conspiracy or contact with the shore, the vessel should be seized if within "treaty distance," though more than 12 miles from the coast, brought into port, held by the Coast Guard, and headquarters notified.

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our prohibitory legislation might thereafter be criminally prosecuted in the United States if found here.

A liquor-laden vessel, arrested within our territorial jurisdiction and not satisfactorily proving its claim of distress, is liable to penalties for unlawful transportation.

Foreign vessels flying foreign flags which they have no right to display, and which have no legal registers from any nation may be boarded and searched anywhere if not within foreign territorial waters, because no diplomatic situation can thus be created, and it is probable that evidence so obtained can be used in criminal prosecution if such evidence, for instance, has to do with confederates on shore who are conspiring with the masters and crews of such vessels. However, boarding and searching under circumstances of this kind should be made with the greatest caution, and the vessel seized only on authority from headquarters, as the determination of the validity of the registers of foreign ships can be made only by the Department of State.

A BRIEF DESCRIPTION OF MARITIME LAW PROCEDURE

The necessity for special laws governing maritime nations becomes clear when the following principles are considered: (1) Laws which control maritime affairs must proceed from concurrent action of all states whose vessels use the highways of commerce, because no single state can exercise jurisdiction over the waters outside of its own boundaries; (2) the right of any aggrieved person to a proper legal remedy requires that he should be allowed to bring his action directly against the vessel or vehicle of commerce from whose action his injury arose, because in many cases the defendant in maritime disputes is beyond the reach of process issuing from any court to which the plaintiff can have access.

Maritime law had its inception long before the beginning of the Christian era, and is the oldest of all systems of law now in force. It is a universal system whose principles are everywhere the same and is administered by courts whose peculiar powers enable them to proceed in rem against any vehicle of commerce, irrespective of its ownership, and by their decrees bind not only all parties to the suit but also all other interested parties throughout the world. In modern law the admiralty courts of the United States have jurisdiction over the high seas and over all those tidal and nontidal rivers, lakes, and waterways upon which commerce can be carried on in vessels between two or more independent states.

Admiralty courts have jurisdiction over many matters, but only those of interest to the Coast Guard are listed below:

Maritime contracts.
Ownership of vessels.
Maritime liens.
Disputes between seamen, and seamen and their officers.
Pilotage.
Towage.
Collision.
Violation of rules of the road resulting in damage.
Salvage.
Maritime insurance.
Seizure for violation of customs and revenue laws.

With special reference to the seizure of vessels and vehicles for violation of the customs and revenue laws and for other offenses when the seizure is made upon navigable waters: The guilty property is by the very act forfeited to the United States at the time the wrongful act is committed, but its guilt must be first established in a suit in admiralty *brought by the officer who made the seizure.* (In our practice a collector of customs usually assumes this responsibility.) The suit must be brought in the name of the United States, giving the owners of the property an opportunity to be heard in its defense. When the guilty property is seized on board a vessel the vessel also may be forfeited if its master or owner were accomplices in the offense.

From what has preceded it will be noted that it might be possible under some circumstances to make an admiralty seizure on land, and for this reason we note that the statutes and other legal documents sometimes employ the phrase "under admiralty and maritime jurisdiction." This phrase is used to indicate admiralty jurisdiction and proceedings which result from wrongs committed afloat.

Actions in admiralty are either actions in rem, or actions in personam alone, or actions in both. An action in rem is an action brought directly against the vessel, cargo, or other property, in reference to which the right of action is asserted, in which the property itself is the actual and nominal defendant irrespective of its ownership or possession. This form of action lies whenever the plaintiff has a maritime lien upon the property, as for seamen's wages, repairs, towage, collision, etc. An action in personam is an action against a personal defendant on account of some contract obligation or claim for damages for which he is personally liable. This form of action lies in all cases except those in which the vessel or other property is made by law or contract solely responsible for the claim of the plaintiff. Action both in rem and in personam may be brought where there is a maritime lien upon the property and at the same time a contract obligation or claim for damages against the owner.

Proceedings are commenced by the filing of a written libel or complaint in the office of the clerk of the admiralty court, in which is stated the nature of the action and the facts which are believed to support the case. This libel must be made under oath. In prize and seizure cases the libel must allege the place of capture and the present location of the property, and ask for process to issue to give notice to all interested parties to appear at a day named and show cause why the forfeiture should not be decreed. In the past it has been the practice of smugglers to attempt to get possession of their vessels after capture by filing libels alleging unlawful possession. But in the case of the Portland Shipping Company, Limited, *v.* the S. S. *Blairmore I*, the Circuit Court of Appeals for the Second Circuit said: "A possessory suit does not lie for a res governmentally held for forfeiture by judicial process," so that this form of procedure is somewhat out of fashion in the second circuit.

The day set for the first hearing is called the "return day," and this day must not be set prior to the 14 days after the advertisement of the libel. At this hearing the case is assigned for trial at a day set to suit the convenience of the court and the interested parties. Trial is conducted *without a jury and by the judge alone*, except in

cases of seizure on land. The evidence may be taken either orally, by deposition, or from the report of a commissioner who had himself taken the testimony in obedience to an order of the court. At the end of the trial the judge issues a decree in which the property is either forfeited and sold or in which the libel is ordered dismissed and the property returned.

PROCEDURE ON SEIZURE OF A VESSEL BY THE COAST GUARD

It is important that officers seizing a vessel, and particularly in the case of seizure taking place within the 12-mile limit or the limits set forth under the various liquor treaties, shall establish the position of seizure by every possible means, such as sun sights, star sights, dead reckoning run from last "fix," radio bearings, cross bearings, range-finder distances, soundings, and stadimeter, if possible. All navigational data should be checked at the time by another officer. If the seizing vessel is inadequately equipped with instruments to locate accurately the place of seizure, it should remain at this place until a major vessel arrives for determining or checking the position. The spot should be well buoyed, if possible, and checked up later if there be any doubt about the accuracy of the navigational work. Attorneys for the liquor interests are becoming more and more expert in harrassing the Government witnesses and in so confusing them as to their position at time of seizure as to make an impression on the court unfavorable to the Government. Should the person making the seizure be inexpert in determining the geographical location by observation (as was the case of a warrant officer, resulting in the Government losing the suit), or should his knowledge be hazy through long disuse, he should prepare himself for the coming trial and be able to answer while on the witness stand all sorts of technical questions relating to navigation and compass errors, which questions have as their object the weakening of the evidence offered by the Government. In several instances an opposing counsel has enlisted the services of expert compass adjusters in an attempt to shake the testimony of a Coast Guard witness.

Headquarters should immediately be informed by telegraph when a seizure is made, and the following papers made out and forwarded as shown below:

(*a*) Form 2636, routed to—

Headquarters	3
Department of Commerce	1
Collector of customs	3
United States district attorney concerned	1
Commander of a division or the commander of a force	1
Ship's files	1

(*b*) A narrative report of the circumstances surrounding the seizure, routed to—

Headquarters	3
Collector of customs concerned	2
United States district attorney concerned	2
Commander of a division or the commander of a force	1
Ship's files	1

The narrative should contain:

(*a*) A detailed account of the seizure.

(*b*) The names, ranks, and ratings of all persons in the Coast Guard who are material witnesses to the transaction.

(*c*) How positions were determined and who determined them, and who checked the data thus obtained.

(*d*) The names of the arrested officers and their finger prints when it is practicable to obtain them.

(*e*) The name of each member of the crew of the seized vessel, and his rating.

(*f*) The official number of the vessel.

(*g*) An enumeration and description of the cargo (which might be obtained from the Customs Service at a later date, if necessary, in the form of a receipt).

The vessel should be delivered with her cargo, apparatus, furniture, and documents, intact, to the collector of customs at the port designated.[5] A vessel seized should be delivered so far as possible in the condition in which she was at the time of seizure, and to this end her papers will be sealed at the time of seizure and kept in the custody of the officers placed in charge of the seized vessel, who will give to the master an itemized receipt for them. Such parts of the vessel containing the cargo and not absolutely required in navigation will be sealed and every effort made to preserve the integrity of the cargo. The master or officers should not be permitted to remove chronometers, sextants, clocks, binoculars, and articles of like nature on the plea of personal property. The crew of the vessel should not be allowed to confer with each other; this to prevent collusion.

Upon arrival at destination it is the duty of the commanding officer and the officer in charge of the prize to assist the collector of customs and the United States district attorney in every way possible in presenting the case to the United States commissioner before whom it shall be brought, and afterwards, if the case be brought to further trial.

Cases of seizure will be required, in most instances, to go through two separate actions: First, the criminal action against the master and other persons belonging to the seized vessel; and, second, the civil action against the vessel and cargo. It is undesirable to bring about circumstances where the two actions would have to be split, that is, to bring the vessel into a jurisdiction where but one of the actions could be tried, necessitating removal to another jurisdiction for the trial of the other action. Therefore, these circumstances should be considered by the officer directing the destination of the prize.

Whenever it is practicable to obtain data of a seizure in addition to that already indicated herein, such information may be of great value to headquarters. For example, it may be important to know the difference in the quantity of cargo between that shown on the manifest and that actually on board upon seizure. Another, a list of names and addresses shown in the ship's papers or any other

[5] Should the collector of customs or United States district attorney decline to proceed against vessel or hold an opinion unfavorable to the case, the vessel should not be released, except by permission of headquarters, who should be notified of all the circumstances.

papers on board may assist in tracing down rum rings. Also, the name and number or other designation of charts found which show the navigation of the vessel, together with the navigational data shown thereon, particularly positions, or a transcript of any data found in the ship's log of this nature, is of probable assistance in showing the vessel's true character, and important in establishing methods and activities of rum running.

The personnel of the Coast Guard should not testify at any judicial or quasi judicial proceedings that might involve any action against them in their official capacity unless they are first represented by competent counsel.

IMPORTANT VIOLATIONS

For the assistance of boarding officers there is compiled below a list of the more important provisions of law which are frequently violated. In making up reports the references should be examined for correctness in order that no error be made in the charge.

FAILURE TO PRODUCE MANIFEST; PENALTY; MERCHANDISE, NOT INCLUDED IN MANIFEST; PENALTY AND FORFEITURE (19 U. S. C. 1584).—Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after unlading from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture; and if any merchandise described in such manifest is not found on board the vessel or vehicle, the master or other person in charge shall be subject to a penalty of $500. If the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. (June 17, 1930, c. 497, Title IV, sec. 585 (a) (1), 46 Stat. 748.)

UNLAWFUL UNLADING; PENALTY; ACCIDENT, STRESS OF WEATHER, OR OTHER NECESSITY (19 U. S. C. 1586).—The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within 4 leagues of the coast of the United States and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $1,000, and such vessel and the merchandise shall be subject to seizure and forfeiture. Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel shall, as soon as possible thereafter, notify the collector of the district within which such unlading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity the penalties above described shall not be incurred. (June 17, 1930, c. 497, Title IV, sec. 586 (a) (1), 46 Stat. 748.)

UNLAWFUL TRANSSHIPMENT; PENALTY, SEIZURE, AND FORFEITURE (19 U. S. C. 1587).—If any merchandise (including sea stores) unladen in violation of the provisions of section 488 of this title is transshipped to or placed in or received on any other vessel, the master of the vessel on which such merchandise is placed and any person aiding or assisting therein shall be liable to a penalty equal to twice the value of the merchandise, but not less than $1,000, and such vessel and such merchandise shall be liable to seizure and forfeiture. (June 17, 1930, c. 497, Title IV, sec. 587, 46 Stat. 749.)

SMUGGLING OR CLANDESTINE IMPORTATIONS: FALSE, FORGED, OR FRAUDULENT INVOICES; PUNISHMENT (19 U. S. C. 1593).—If any person knowingly and willfully, with intent to defraud the revenue of the United States, smuggles or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, every such person, his, her, or their aiders and abettors, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding $5,000, or imprisoned for any term not exceeding two years, or both, at the discretion of the court. (June 17, 1930, c. 497, Title IV, sec. 593 (a), 46 Stat. 751.)

NOTE.—Intoxicating liquor is "merchandise" within the meaning of this section, though its importation had been prohibited by the national prohibition act prior to the enactment of this section. (Powers *v.* U. S. 294 F. 512.)

FRAUDULENTLY OR KNOWINGLY IMPORTING OR ASSISTING IN IMPORTING MERCHANDISE; BUYING, SELLING, TRANSPORTING, OR CONCEALING UNLAWFULLY IMPORTED MERCHANDISE (19 U. S. C. 1593).—If any person fraudulently or knowingly imports or brings into the United States, or assists in so doing, any merchandise, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding $5,000 nor less than $50, or be imprisoned for any time not exceeding two years, or both. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury. (June 17, 1930, c. 497, Title IV, sec. 593 (b) (c), 46 Stat. 751.)

NOTE.—Smuggling intoxicating liquors or knowingly facilitating their transportation after their importation constitutes a criminal offense under this section. (U. S. *v.* Chesbrough, 176 F. 778.)

BRIBERY OF CUSTOMS OFFICERS (19 U. S. C. 1601).—Any person who gives, or offers to give, or promises to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of merchandise or baggage, or of the liquidation of the entry thereof, or by threats or demands or promises of any character attempts to improperly influence or control any such officer or employee of the United States as to the performance of his official duties, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment for a term not exceeding two years, or both, and evidence of such giving, offering, or promising to give, or attempting to influence or control, satisfactory to the court in which such trial is had, shall be prima facie evidence that the same was contrary to law. (June 17, 1930, c. 497, Title IV, sec. 601, 46 Stat. 753.)

NOTE.—Officers of the Coast Guard are officers of the customs.

RESISTING REVENUE OFFICERS, RESCUING OR DESTROYING SEIZED PROPERTY; USING DEADLY WEAPON (18 U. S. C. 121).—Whoever shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue, or his deputy, or any person assisting him in the execution of his duties, or any person authorized to make searches and seizures, in the execution of his duty, or shall rescue, attempt to rescue, or cause to be rescued, any property which has been seized by any person so authorized; or whoever before, at, or after such seizure, in order to prevent the seizure or securing of any goods, wares, or merchandise by any person so authorized, shall stave, break, throw overboard, destroy, or remove the same, shall be fined not more than $2,000, or imprisoned not more than one year, or both; and whoever shall use any deadly or dangerous weapon in resisting any person authorized to make searches or seizures in the execution of his duty, with intent to commit a bodily injury upon him or to deter or prevent him from discharging his duty, shall be imprisoned not more than 10 years. (R. S. 5447; March 4, 1909, c. 321, sec. 65, 35 Stat. 1100.)

CONSPIRING TO COMMIT OFFENSE AGAINST UNITED STATES (18 U. S. C. 88).—If two or more persons conspire either to commit any offense against the United

States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000 or imprisoned not more than two years, or both. (R. S. 5440; May 17, 1879, c. 8, 21 Stat. 4; March 4, 1909, c. 321, 37, 35 Stat. 1096.)

NOTE.—Conspiracy by two or more persons on American vessel to smuggle dutiable or prohibited merchandise into United States is a crime, under this section. Conspiracy to import intoxicating liquors without paying duties is an offense. (See Supreme Court decision, Ford et al. *v.* United States, April 11, 1927.)

REMOVING OR CONCEALING ARTICLES WITH INTENT TO DEFRAUD UNITED STATES (26 U. S. C. 1181).—Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper are intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited. And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than $500. (R. S. 3450.)

UNLAWFUL TRANSPORTATION OF LIQUOR; SEIZURE AND DESTRUCTION OF LIQUOR AND SALE OF VEHICLE (NATIONAL PROHIBITION ACT) (27 U. S. C. 40).—When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this chapter in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court, upon conviction of the person so arrested, shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks, and by handbills posted in three public places near the place of seizure; and if no claimant shall appear within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts. **(October 28, 1919, c. 85, Title II, 26, 41 Stat. 315.)**

NOTE.—Under this section conviction of the person in charge of a vehicle, or the master of a vessel, seized while being used for the illegal transportation of liquor, is a condition precedent to the forfeiture of the vehicle or vessel. (The J. Duffy (D. C. Conn. 1926) 14 F. 426.)

A large iron steamship of 10,000 tons, engaged in general commerce, is not necessarily subject to seizure because liquor was transported thereon through the unlawful act of members of the crew, especially as "boat," "craft," and "water craft" are usually applied to small vessels while larger vessels, especially in the case of large iron steamships, are usually referred to by the terms "steamer," or "steamship," or "vessel." (The Saxon (D. C. S. C. 1921), 269 F. 639.)

PENALTY FOR UNLAWFULLY PROCEEDING ON FOREIGN VOYAGE (46 U. S. C. 278).—If any vessel, enrolled or licensed, shall proceed on a foreign voyage, without first giving up her enrollment and license to the collector of the district comprehending the port from which she is about to proceed on such voyage, and being duly registered by such collector, every such vessel, together with her tackle, apparel, and furniture, and the merchandise so imported therein, shall be liable to seizure and forfeiture. (R. S. 4337.)

PENALTY FOR VIOLATION OF LICENSE (46 U. S. C. 325).—Whenever any licensed vessel is transferred, in whole or in part, to any person who is not at the time of such transfer a citizen of and resident within the United States, or is employed in any other trade than that for which she is licensed, or is found with a forged or altered license, or one granted for any other vessel, such vessel with her tackle, apparel, and furniture, and the cargo, found on board her, shall be forfeited. But vessels which may be licensed for the mackerel fishery shall not incur such forfeiture by engaging in catching cod or fish of any other description whatever. (R. S. 4377.)

NOTE.—A vessel licensed for the coasting trade, or fisheries, if engaged in an illegal traffic, is forfeitable. (The Two Friends (C. C. Mass. 1812), Fed. Cas. No. 14289.)

GENERAL LIST OF PRINCIPAL ENFORCEMENT PROVISIONS OF CUSTOMS AND REVENUE LAWS[6]

NOTE.—T. A.=tariff act of June 17, 1930.

ALIENS, FAILURE TO PREVENT LANDING. (February 5, 1917, c. 29, sec. 10; C. S. 4289¼ee; 8 U. S. C. 146.)

ALIENS, UNLAWFUL BRINGING IN. (February 5, 1917, c. 29, sec. 8; C. S. 4289¼dd; 8 U. S. C. 144.)

ALIENS, BRINGING IN DISEASED. (February 5, 1917, c. 190, sec. 26; C. S. 4289¼ee; 8 U. S. C. 145.)

ANOTHER PORT, NO PERMIT TO PROCEED. (T. A. Title IV, sec. 445; C. S. 5841e-14; 19 U. S. C. 1445.)

ARRIVAL, REPORT OF. (T. A. Title IV, sec. 433; C. S. 5841e-2; 19 U. S. C. 1433.)

BRIBERY, UNITED STATES OFFICER. (R. S. 5451am; C. S. 10203; 18 U. S. C. 91.)

BRIBERY OR ATTEMPT. (T. A. Title IV, sec. 601; C. S. 5841h-21; 19 U. S. C. 1601.)

CLEARANCE, OUTBOUND. (R. S. 4197; C. S. 7789; 46 U. S. C. 91.)

CONCEALING AND FRAUDULENTLY IMPORTING. (T. A. Title IV., sec. 593b; C. S. 5841h-13; 19 U. S. C. 1593.)

CONCEALING OR REMOVAL OF TAXABLE GOODS. (R. S. 3450; C. S. 6352; 26 U. S. C. 1181.)

CONSPIRACY. (R. S. 5440am; C. S. 10201; 18 U. S. C. 88.)

CREW LIST, FAILURE TO PRODUCE. (R. S. 4576am; C. S. 8367; 46 U. S. C. 677.)

DEPARTURE BEFORE ENTRY. (T. A. Title IV, sec. 585; C. S. 5841h-4; 19 U. S. C. 1585.)

DOCUMENTS, UNITED STATES EXAMINATION OF. (R. S. 4336; C. S. 8085; 46 U. S. C. 277.)

DOCUMENTS, INTERNAL REVENUE, FRAUDULENT. (R. S. 3451; C. S. 6353; 26 U. S. C. 1183.)

ENTRY AT ANOTHER PORT. (T. A. Title IV, sec. 444; C. S. 5841e-13; 19 U. S. C. 1444.)

ENTRY OF AMERICAN VESSEL. (T. A. Title IV, sec. 434; C. S. 5841e-3; 19 U. S. C. 1434.)

[6] Originally compiled by Commander Stanley V. Parker, U. S. C. G.

ENTRY OF FOREIGN VESSEL. (T. A. Title IV, sec. 435; C. S. 5841e–4; 19 U. S. C. 1435.)
ENTRY AND REPORT, FAILURE TO MAKE. (T. A. Title IV, sec. 436; C. S. 5841e–5; 19 U. S. C. 1436.)
FLAG, REVENUE, MISUSE. (R. S. 2764; C. S. 8459½b–57; 14 U. S. C. 64.)
FOREIGN VOYAGE, UNLAWFULLY ON. (R. S. 4337; C. S. 8086; 46 U. S. C. 278.)
FORFEITURE OR SEIZURE. (T. A. Title IV, sec 594; C. S. 5841h–14; 19 U. S. C. 1594.)
FORGING OR ALTERING SHIP'S OR CUSTOMHOUSE PAPERS. (R. S. 5423am; C. S. 10240; 18 U. S. C. 129.)
GIFTS, OFFERING TO CUSTOMS OFFICERS. (R. S. 5452; C. S. 10235; 18 U. S. C. 124.)
HEAVING VESSEL TO, EXAMINATION. (R. S. 2765; C. S. 8459½b, 58; 14 U. S. C. 68.)
IMPERSONATING UNITED STATES OFFICER. (R. S. 5438; C. S. 10196; 18 U. S. C. 76.)
IMPORTS FROM CONTIGUOUS COUNTRIES. (T. A. Title IV, sec. 459; C. S. 5841e–28; 19 U. S. C. 1459.)
IMPORTS FROM CONTIGUOUS COUNTRIES, PENALTIES. (T. A. Title IV, sec. 460; C. S. 5841e–29; 19 U. S. C. 1460.)
INTOXICATING LIQUORS, NUISANCE. (Oct. 28, 1919, Title II, sec. 21; C. S. 10138½jj; 27 U. S. C. 33.)
INTOXICATING LIQUORS, ENTRY PROHIBITED. (Nov. 23, 1921, c. 134, sec. 2; C. S. 10138½aaa; 27 U. S. C. 56.)
INTOXICATING LIQUORS, RELANDING EXPORTED. (R. S. 3330; C. S. 6125; 26 U. S. C. 375.)
INTOXICATING LIQUORS, SHIPMENT MISBRANDED. (R. S. 3449; C. S. 6351; 26 U. S. C. 1179.)
INTOXICATING LIQUORS, TRANSPORTATION PROHIBITED. (Oct. 28, 1919, Title II, sec. 3; C. S. 10138½aa; 27 U. S. C. 12.)
INTOXICATING LIQUORS, SEIZURE. (Oct. 28, 1919, Title II, sec. 26; C. S. 10138½mm; 27 U. S. C. 40.)
MANIFESTS. (T. A. Title IV, sec. 431; C. S. 5841e; 19 U. S. C. 1431.)
MANIFESTS, FAILURE TO PRODUCE. (T. A. Title IV, sec. 584; C. S. 5841h–3; 19 U. S. C. 1584.)
MANIFESTS, MAILING COPY OF. (T. A. Title IV, sec. 439; C. S. 5841e–8; 19 U. S. C. 1439.)
MANIFESTS, OUTWARD, FAILURE. (R. S. 4197; C. S. 7789; 46 U. S. C. 91.)
MANIFESTS, PRODUCTION OF. (T. A. Title IV, sec. 583; C. S. 5841h–2; 19 U. S. C. 1583.)
MERCHANDISE, IMPORTED ILLEGALLY, FALSE DOCUMENTS. (T. A. Title IV, sec. 591, 592, 593; C. S. 5841h–10, 11, 12; 19 U. S. C. 1591, 1592, 1593.)
MERCHANDISE, CONTIGUOUS COUNTRY. (T. A. Title IV, sec. 460; C. S. 5841e–29; 19 U. S. C. 1460.)
NARCOTIC DRUGS, IMPORTATION PROHIBITED. (Feb. 9, 1909, c. 100, sec. 2am; C. S. 8800; 21 U. S. C. 173.)
NARCOTIC DRUGS, POSSESSION, TRANSPORTATION. (Feb. 9, 1909, c. 100, sec. 2; C. S. 8801; 21 U. S. C. 174.)
NARCOTIC DRUGS, VESSELS ARRIVING. (Feb. 9, 1909, c. 100, sec. 8am; C. S. 8801b; 21 U. S. C. 184.)
OBSTRUCTING REVENUE OFFICER. (R. S. 3068; C. S. 5771; 18 U. S. C. 122.)
OFFICER, RESISTING OR OBSTRUCTING (DOCUMENTS). (R. S. 4376; C. S. 8131; 46 U. S. C. 324.)
OFFICER, REVENUE, RESISTING. (R. S. 5447am; C. S. 10233; 18 U. S. C. 121.)
OFFICER, U. S., IMPERSONATING. (R. S. 5438am; C. S. 10196; 18 U. S. C. 76.)
PORT OF DESTINATION, FAILURE TO PROCEED AFTER SEALING (small craft). (T. A. Title IV, sec. 464; C. S. 5841e–33; 19 U. S. C. 1464.)
POSSESSION WITH INTENT TO SELL AND EVADE TAX. (R. S. 3452, 3453; C. S. 6354, 6355; 26 U. S. C. 1184, 1185.)
POST ENTRY, MAILING OF. (T. A. Title IV, sec. 440; C. S. 5841e–9; 19 U. S. C. 1440.)
QUARANTINE, NO BILL OF HEALTH. (Feb. 15, 1893, c. 114, sec. 2; C. S. 9157; 42 U. S. C. 82.)
QUARANTINE, VIOLATION OF LAW. (Feb. 15, 1893, c. 114, sec. 1am; C. S. 9156; 42 U. S. C. 81.)

RELANDING, UNLAWFUL. (T. A. Title IV, sec. 589; C. S. 5841h–8; 19 U. S. C. 1589.)
RESISTING OR OBSTRUCTING OFFICER (NAV. LAW—DOCUMENTS). (R. S. 4376; C. S. 8131; 46 U. S. C. 324.)
RESISTING OR INTERFERING WITH REVENUE OFFICER. (R. S. 5447am; C. S. 10233; 18 U. S. C. 121.)
REVENUE FLAG, MISUSE. (R. S. 2764; C. S. 8459½b–57; 14 U. S. C. 64.)
SEARCH OF VEHICLES AND PERSONS. (R. S. 3061; C. S. 5763; 19 U. S. C. 1581, 482.)
SEARCH WARRANTS. (T. A. Title IV, sec. 595; C. S. 5841h–15; 19 U. S. C. 1595.)
SEA STORES, MANIFESTED. (T. A. Title IV, sec. 432; C. S. 5841s–1; 19 U. S. C. 1432.)
SEIZED PROPERTY, TAKING FROM REVENUE OFFICER. (R. S. 5447am; C. S. 10233; 18 U. S. C. 121.)
SEIZED PROPERTY, DELIVERY TO COLLECTOR. (T. A. Title IV, sec. 605; C. S. 5841h–25; 19 U. S. C. 1605.)
SMUGGLING. (T. A. Title IV, sec. 593a; C. S. 5841h–12; 19 U. S. C. 1593.)
STOP, REFUSING TO, FOR SEARCH (VEHICLES). (R. S. 3062; C. S. 5764; 19 U. S. C. 483.)
TRADE FOR WHICH NOT LICENSED, ENGAGING IN. (R. S. 4377; C. S. 8132; 46 U. S. C. 325.)
TRANSSHIPMENT, WITHIN FOUR LEAGUES. (T. A. Title IV, sec. 587; C. S. 5841h–6; 19 U. S. C. 1587.)
UNLADING BEFORE ENTRY. (T. A. Title IV, sec. 448; C. S. 5841e–17; 19 U. S. C. 1448.)
UNLADING EXCEPT AT PORT OF ENTRY. (T. A. Title IV, sec. 447; C. S. 5841–16; 19 U. S. C. 1447.)
UNLADING, ILLEGAL, PENALTY AND FORFEITURE. (T. A. Title IV, sec. 453; C. S. 5841e–22; 19 U. S. C. 1453.)
UNLADING, NIGHT OR SUNDAYS. (T. A. Title IV, sec. 452; C. S. 5841e–21; 19 U. S. C. 1452.)
UNLADING WITHIN FOUR LEAGUES. (T. A. Title IV, sec. 586; C. S. 5841h–5; 19 U. S. C. 1586.)
UNLADING, TIME FOR—SPECIAL LICENSE. (T. A. Title IV, sec. 450; C. S. 5841e–19; 19 U. S. C. 1450.)

POWERS CONFERRED BY CONGRESS RELATING TO SEIZURE AND ENFORCEMENT OF LAW AT SEA

(OTHER THAN CUSTOMS, REGISTRY, AND ENROLLMENT ACTS)

Powers conferred specifically upon Coast Guard cutters

Embargo and nonintercourse acts: Joint resolution of March 26, 1794, 1 Stat. 400; act of May 22, 1794, c. 33, 1 Stat. 369; act of April 18, 1806, c. 29, 2 Stat. 379; act of December 22, 1807, c. 5, 2 Stat. 451 (supplemented by the act of April 25, 1808, c. 66, sec. 7, 2 Stat. 499); act of March 1, 1809, c. 24, 2 Stat. 528; act of April 4, 1812, c. 49, 2 Stat. 700; act of December 17, 1813, c. 1, 3 Stat. 88.

Slave trade: Act of February 28, 1803, c. 10, 2 Stat. 205 (prohibiting importation into States forbidding admission); act of March 2, 1807, c. 22, 2 Stat. 426 (not providing for the use of the cutters, but recognizing that use by giving the seizing crew part of the proceeds, whether the seizure "be made by an armed vessel of the United States, or revenue cutters thereof"); act of March 3, 1819, c. 101, 3 Stat. 532 (same provision).

Miscellaneous: Act of June 25, 1798, c. 58, 1 Stat. 570 (failure to report aliens on board); act of July 13, 1861, c. 3, sec. 7, 12 Stat. 255 (closing Confederate ports and forfeiting vessels of Confederate citizens); act of August 15, 1914, c. 253, 38 Stat. 692 (regulating sponge fishing in Gulf of Mexico); act of August 31, 1852, c. 113, sec. 5, 10 Stat. 121, 140 (illegal carriage of mail); act of June 8, 1872, c. 335, secs. 235–237, 17 Stat. 283, 312 (same); act of March 6, 1896, c. 49, 29 Stat. 54 (anchorage in St. Marys River); act of May 27, 1796, c. 31, 1 Stat. 474 (State quarantine laws); act of July 13, 1832, c. 204, 4 Stat. 577 (same); Joint Resolution of May 26, 1866, 14 Stat. 357 (same); act of June 7, 1924, c. 316, sec. 7, 43 Stat. 604, 605 (oil pollution act).

Powers conferred upon some other arm of the Government (not necessarily excluding a similar power in the Coast Guard cutters)

Embargo and nonintercourse acts: Act of February 9, 1799, c. 2, 1 Stat. 613; act of February 27, 1800, c. 10, 2 Stat. 7; act of January 9, 1809, c. 5, 2 Stat. 506.
Neutrality laws: Act of June 5, 1794, c. 50, 1 Stat. 381; act of April 20, 1818, c. 88, 3 Stat. 447; act of March 10, 1838, c. 31, 5 Stat. 212; act of June 15, 1917, c. 30, Title V, 40 Stat. 217, 221.
Piracy laws: Act of March 3, 1819, c. 77, 3 Stat. 510; act of August 5, 1861, c. 48, 12 Stat. 314.
Miscellaneous: Act of May 10, 1800, c. 51, 2 Stat. 70 (slave trade); act of February 4, 1815, c. 31, 3 Stat. 195 (trading with the enemy); act of August 2, 1813, c. 57, 3 Stat. 84 (seizure of American vessel using English pass, on high seas); act of February 19, 1862, c. 27, 12 Stat. 340 (coolie trade); act of September 8, 1916, c. 463, sec. 806, 39 Stat. 756, 799 (vessel departing without clearance); act of June 15, 1917, c. 30, Title II, 40 Stat. 217, 220 (regulations governing vessels in territorial waters in time of emergency).

Laws for which there is no express provision for seizure or enforcement

Navigation regulations: Act of March 1, 1817, c. 31, 3 Stat. 351 (foreign vessels in coasting trade); act of March 3, 1817, c. 39, 3 Stat. 361 (same); act of March 2, 1819, c. 46, 3 Stat. 488 (excess of passengers); act of February 22, 1847, c. 16, sec. 2, 9 Stat. 127, 128 (same); act of March 3, 1855, c. 213, 10 Stat. 715 (same); act of July 4, 1864, c. 249, sec. 7, 13 Stat. 390, 391 (false passenger list); act of July 7, 1838, c. 191, 5 Stat. 304 (inspection and license for steam vessels); act of May 5, 1864, c. 78, sec. 2, 13 Stat. 63, 64 (deception as to name of vessels); act of February 28, 1871, c. 100, secs. 1, 45, 16 Stat. 440, 453 (same); act of March 3, 1805, c. 42, sec. 3, 2 Stat. 342, 343 (armed vessel departing without clearance); act of June 7, 1897, c. 4, sec. 4, 30 Stat. 96, 103 (rules of navigation); act of June 9, 1910, c. 268, sec. 7, 36 Stat. 462, 463 (motor-boat regulations); act of May 28, 1906, c. 2566, sec. 1, 34 Stat. 204 (foreign-built dredge not documented).
Embargo and nonintercourse acts: Act of June 13, 1798, c. 53, 1 Stat. 565; act of February 28, 1806, c. 9, 2 Stat. 351; act of April 18, 1818, c. 70, 3 Stat. 432; act of May 15, 1820, c. 122, 3 Stat. 602; act of March 1, 1823, c. 22, 3 Stat. 740.
Trading with the enemy: Act of July 6, 1812, c. 129, 2 Stat. 778.
Quarantine laws: Act of August 30, 1890, c. 839, sec. 6, 26 Stat. 414, 416; act of February 15, 1893, c. 114, 27 Stat. 449.
Opium laws: Act of February 23, 1887, c. 210, 24 Stat. 409; act of February 9, 1909, c. 100, 35 Stat. 614; act of January 17, 1914, c. 9, 38 Stat. 275.
Miscellaneous: Act of April 30, 1790, c. 9, sec. 8, 1 Stat. 112, 113 (piracy); act of March 22, 1794, c. 11, 1 Stat. 347 (slave trade); act of March 1, 1817 c. 22, 3 Stat. 347 (transportation of timber cut from navy lands); act of March 2, 1831, c. 66, 4 Stat. 472 (same); act of March 3, 1825, c. 107, 4 Stat. 132 (taking wrecks on Florida coast to foreign port); act of May 6, 1882, c. 126, sec. 10, 22 Stat. 58, 61, amended by the act of July 5, 1884, c. 220, sec. 10, 23 Stat. 115, 117 (Chinese exclusion); act of July 2, 1890, c. 647, sec. 6, 26 Stat. 209, 210 (property transported in restraint of trade); act of August 13, 1912, c. 287, secs. 1, 9, 37 Stat. 302, 308 (use of radio apparatus on vessel on high seas). See also the enumeration of certain offenses under the criminal code which usually take place on high seas, in United States v. Bowman, 260 U. S. 94, 98–100.

NOTE.—The foregoing summary of laws is taken from the concurring opinion of Brandeis and Holmes, J. J. Maul *v.* United States (The Underwriter), 274 U. S. 501.

EXTRACTS FROM IMPORTANT SUPREME COURT DECISIONS

THE CUNARD STEAMSHIP COMPANY, LTD., ET AL., *v.* ANDREW W. MELLON, SECRETARY OF THE TREASURY, ET AL. (262 U. S. 100)

Nos. 659, 660, 661, 662, 666, 667, 668, 669, 670, 678, 693, 694. October term, 1922.

Mr. Justice Van Devanter delivered the opinion of the court.

These are suits by steamship companies operating passenger ships between United States ports and foreign ports to enjoin threatened application to them and their ships of certain provisions of the national prohibition act. The defendants are officers of the United States charged with the act's enforcement. In the first 10 cases the plaintiffs are foreign corporations and their ships are of foreign registry, while in the remaining two the plaintiffs are domestic corporations and their ships are of United States registry. All the ships have long carried and now carry, as part of their sea stores, intoxicating liquors intended to be sold or dispensed to their passengers and crews at meals and otherwise for beverage purposes. Many of the passengers and crews are accustomed to using such beverages and insist that the ships carry and supply liquors for such purposes. By the laws of all the foreign ports at which the ships touch this is permitted and by the laws of some it is required. The liquors are purchased for the ships and taken on board in the foreign ports and are sold or dispensed in the course of all voyages, whether from or to those ports. * * *

While the construction and application of the national prohibition act is the ultimate matter in controversy, the act is so closely related to the eighteenth amendment, to enforce which it was enacted, that a right understanding of it involves an examination and interpretation of the amendment. The first section of the latter declares (40 Stat. 1050, 1941):

"SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

These words, if taken in their ordinary sense, are very plain. The articles proscribed are intoxicating liquors for beverage purposes. The acts prohibited in respect of them are manufacture, sale, and transportation within a designated field, importation into the same, and exportation therefrom. And the designated field is the United States and all territory subject to its jurisdiction. There is no controversy here as to what constitutes intoxicating liquors for beverage purposes; but opposing contentions are made respecting what is comprehended in the terms "transportation," "importation," and "territory."

Some of the contentions ascribe a technical meaning to the words "transportation" and "importation." We think they are to be taken in their ordinary sense, for it better comports with the object to be attained. In that sense transportation comprehends any real carrying about or from one place to another. It is not essential that the carrying be for hire, or by one for another; nor that it be incidental to a transfer of the possession or title. If one carries in his own conveyance for his own purposes it is transportation no less than when a public carrier at the instance of a consignor carries and delivers to a consignee for a stipulated charge. (See United States *v.* Simpson, 252 U. S. 465.) Importation, in a like sense, consists in bringing an article into a country from the outside. If there be an actual bringing in, it is importation regardless of the mode in which it is effected. Entry through a customhouse is not of the essence of the act.

Various meanings are sought to be attributed to the term "territory" in the phrase "the United States and all territory subject to the jurisdiction thereof." We are of opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section show that the term is used in a physical and not a metaphorical sense; that it refers to areas or districts having fixity of location and recognized boundaries.

It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or 3 geographic miles. * * * This, we hold, is the territory which the amendment designates as its field of operation, and the designation is not of a part of this territory but of "all" of it. * * *

A merchant ship of one country voluntarily entering the territorial limits of another subjects herself to the jurisdiction of the latter. The jurisdiction attaches in virtue of her presence, just as with other objects within those limits. During her stay she is entitled to the protection of the laws of that place and correlatively is bound to yield obedience to them. Of course, the local sovereign may out of considerations of public policy choose to forego the exertion of its jurisdiction or to exert the same in only a limited way, but this is a matter resting solely in its discretion. The rule, now generally recognized, is nowhere better stated than in The Exchange, 7 Cranch, 116, 136, 144, where Chief Justice Marshall, speaking for this court, said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

"All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source." * * *

In principle, therefore, it is settled that the amendment could be made to cover both domestic and foreign merchant ships when within the territorial waters of the United States, and we think it has been made to cover both when within those limits. It contains no exception of ships of either class and the terms in which it is couched indicate that none is intended. Such an exception would tend to embarrass its enforcement and to defeat the attainment of its obvious purpose, and therefore can not reasonably be regarded as implied.

In itself the amendment does not prescribe any penalties, forfeitures, or mode of enforcement, but by its second section leaves these to legislative action.

With this understanding of the amendment, we turn to the national prohibition act (c. 83, 41 Stat. 305), which was enacted to enforce it. The act is a long one and most of its provisions have no real bearing here. Its scope and pervading purpose are fairly reflected by the following excerpts from Title II:

"SEC. 3. No person shall, on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed, to the end that the use of intoxicating liquor as a beverage may be prevented * * *."

"SEC. 21. Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance * * *."

"SEC 23. That any person who shall, with intent to effect a sale of liquor, by himself, his employee, servant, or agent, for himself or any person, company, or corporation, keep or carry around on his person, or in a vehicle, or other conveyance whatever, * * * any liquor * * * in violation of this title is guilty of a nuisance * * *."

"SEC. 26. When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or aircraft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law * * *."

Other provisions show that various penalties and forfeitures are prescribed for violations of the act, and that the only instance in which the possession of intoxicating liquor for beverage purposes is recognized as lawful is where the liquor was obtained before the act went in effect and is kept in the owner's dwelling for use therein by him, his family, and his bona fide guests.

* * * There is in the act no provision making it applicable to domestic merchant ships when outside the waters of the United States, nor any provision making it inapplicable to merchant ships, either domestic or foreign, when within those waters, save in the Panama Canal. There is a special provision dealing with the Canal Zone which excepts "liquor in transit through the Panama Canal or on the Panama Railroad." The exception does not discriminate between domestic and foreign ships, but applies to all liquor in transit through the canal, whether on domestic or foreign ships. Apart from this exception, the provision relating to the Canal Zone is broad and drastic like the others * * *.

Examining the act as a whole, we think it shows very plainly, first, that it is intended to be operative throughout the territorial limits of the United States, with the single exception stated in the Canal Zone provision; secondly, that it is not intended to apply to domestic vessels when outside the territorial waters of the United States; and, thirdly, that it is intended to apply to all merchant vessels, whether foreign or domestic, when within those waters, save as the Panama Canal Zone exception provides otherwise.

In so saying we do not mean to imply that Congress is without power to regulate the conduct of domestic merchant ships when on the high seas, or to exert such control over them when in foreign waters as may be affirmatively or tacitly permitted by the territorial sovereign, for it long has been settled that Congress does have such power over them. * * * But we do mean that the national prohibition act discloses that it is intended only to enforce the eighteenth amendment and limits its field of operation, like that of the amendment, to the territorial limits of the United States. * * *

It therefore is of no importance that the liquors in the plaintiffs' ships are carried only as sea stores. Being sea stores does not make them liquors any the less, nor does it change the incidents of their use as beverages. But it is of importance that they are carried through the territorial waters of the United States and brought into its ports and harbors. This is prohibited transportation and importation in the sense of the amendment and the act. The recent cases of Grogan *v.* Walker & Sons, and Anchor Line *v.* Aldridge (259 U. S. 80), are practically conclusive on the point. The question in one was whether carrying liquor intended as a beverage through the United States from Canada to Mexico was prohibited transportation under the amendment and the act, the liquor being carried in bond by rail, and that in the other was whether the transshipment of such liquor from one British ship to another in the harbor of New York was similarly prohibited, the liquor being in transit from Scotland to Bermuda. The cases were considered together and an affirmative answer was given in each, * * *.

Our conclusion is that in the first 10 cases—those involving foreign ships—the decrees of dismissal were right and should be affirmed, and in the remaining two—those involving domestic ships—the decrees of dismissal were erroneous and should be reversed with directions to enter decrees refusing any relief as respects the operations of the ships within the territorial waters of the United States and awarding the relief sought as respects operations outside those waters.

Decrees in Nos. 659, 660, 661, 662, 666, 667, 668, 669, 670, and 678, *affirmed.*

Decrees in Nos. 693 and 394, *reversed.*

UNITED STATES *v.* ONE FORD COUPÉ AUTOMOBILE, 272 U. S. 321

No. 115. Argued December 9, 1925; reargued October 19, 20, 1926. Decided November 22, 1926.

SYLLABUS

1. Where property declared by a Federal statute to be forfeited because used in violation of Federal law is seized by one having no authority to do so, the United States may adopt the seizure with the same effect as if it had originally been made by one duly authorized.

2. An automobile, seized while being used for the purpose of depositing or concealing tax-unpaid illicit liquors with intent to defraud the United States of the taxes imposed thereon, is forfeitable under Revised Statutes, section 3450, and the interests of innocent persons in the vehicle are thereby divested.

3. Intoxicating liquor, though made for beverage purposes in violation of the national prohibition act, is subject to tax. Supplementary prohibition act of November 23, 1921, considered, and revenue act of 1921.

4. The basic tax of $2.20 per gallon imposed by the revenue acts on liquor illegally produced is not to be treated as a penalty, but is a tax within the meaning of Revised Statutes, section 3450, and being unpaid makes that section applicable, even if the additional amounts imposed by the acts were deemed penalties.

5. There is no constitutional objection to enforcing a penalty by forfeiture of an offending article.

6. In a forfeiture proceeding, on certiorari to a judgment quashing the libel on motion of a claimant, the allegations in the claim will not be considered. The allegations of the libel are accepted as true.

7. Under Revised Statutes, section 3450, if the intent to defraud the United States of the tax is established by any competent evidence, a use of the vehicle for the purpose of concealing the liquor suffices, even if the offender obtained it, not from a distillery, bonded warehouse, or importer, but from a stranger.

8. Revised Statutes, section 3450, providing that "Whenever any goods * * * in respect whereof any tax is or shall be imposed * * * are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax * * *; (every) * * * conveyance whatsoever, * * * used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited," is not in conflict with or superseded by section 26 of Title II of the national prohibition act, which provides for the seizure and forfeiture, in certain cases, of vehicles used in illegally transporting intoxicating liquors, but saves the interests of innocent persons.

9. In view of section 5 of the supplemental prohibition act, an implied repeal by that act or the national prohibition act, of Revised Statutes, section 3450, could not result from mere inconsistency but must rest upon direct conflict.

10. Section 26, Title II, of the national prohibition act, in its relation to the forfeiture of vehicles, applies only to cases incident to the prosecution of persons transporting liquor in violation of that act, and does not protect innocent persons whose vehicles are forfeited under Revised Statutes, section 3450.

11. Section 26, supra, applies only where a person is discovered in the act of transporting intoxicating liquor in violation of law. 4 F. (2d) 528, reversed.

NOTE.—The points of law decided in the syllabus above are of great importance to the Coast Guard, for the statute involved, 3450 R. S., is applicable to vessels as well as to vehicles. Section 3061, R. S., authorizes persons who are competent to stop, board, and search vessels to stop and search vehicles "as well without as within their districts" when there is reasonable cause to believe that the vehicle contains merchandise "which is subject to duty" or which "shall have been introduced into the United States in any manner contrary to law" and provides for its seizure if violations of law are found. Section 3062, R. S., provides for the forfeiture of vehicles.

The difficulty of proving smuggling or illegal importation by foreign labels and stamps and by circumstantial evidence has been great, and for that reason R. S. 3062 has not been frequently used.

Now that R. S. 3450 is available the situation is altered. It seems logical to state that if liquor is not of foreign manufacture it must be deemed to have been made within the United States, and if "tax unpaid" and not forfeitable under R. S. 3062 that it must be under R. S. 3450. It is therefore suggested that in cases where applicable the seized vehicle be charged with violation of both R. S. 3062 and R. S. 3450.

Care must be used in drawing charges under R. S. 3450 in order not to become involved with section 26, Title II, of the national prohibition act, which would be fatal to an absolute forfeiture if the driver did not own the car. Under the latter act forfeiture of the vehicle is dependent upon the conviction of the driver for being discovered "in the act of *transporting*, in violation of law, intoxicating liquors." The word "removal," as used in R. S. 3450, should therefore be carefully avoided because of the possibility of connecting it with "transporting" in the national prohibition act and thereby endangering the whole proceeding.

The vehicle should be libeled for being used "for the purpose of concealing certain goods with the intent to defraud the United States, to wit," etc. It should be noted that this is a civil action against the vehicle and not against the driver, or any other person. If concealment of "tax-unpaid merchandise" is proved, the vehicle is forfeited absolutely, prior liens to the contrary notwithstanding.

FORD ET AL. *v.* UNITED STATES. (THE QUADRA CASE (273 U. S. 593))

No. 312. Argued October 26, 27, 1926. Decided April 11, 1927. Mr. Chief Justice Taft delivered the opinion of the court.

* * * The case on the evidence made by the Government was as follows: On October 12, 1924, the United States Coast Guard cutter *Shawnee*, on the lookout for vessels engaged in the illicit importation into the United States of intoxicating liquor, saw the *Quadra*, a British steamer of Canadian register, near the Farallon Islands. As the *Shawnee* bore down on her to investigate, she turned and began to move off shore. The captain of the *Shawnee* signaled her to stop, and she complied. As the *Shawnee* approached her, a motor boat, *C–55*, was seen just after the boat had left the *Quadra*. The *Shawnee* captain signaled the boat to stop, and because it did not do so fired a shot across its bow, whereupon it rounded about and came alongside. It had two men and a number of sacks of intoxicating liquor as well as a partly filled case of beer bottles. It was made fast to the *Shawnee* and the two men were placed under arrest. The *Shawnee* captain then sent two officers aboard the *Quadra* to examine her papers. Ford, her captain, one of the convicted defendants, refused to show his papers or to give any information until he had consulted counsel. The *Shawnee* officers then took charge of her. She was found to contain a large quantity of intoxicating liquor, and on refusal of Ford to take her by steam into San Francisco, the *Shawnee* towed her to that port and turned her cargo over to the United States customs officers, while her officers and crew, including Ford, were arrested.

The testimony for the Government tended to show that the *Quadra* when seized was 5.7 nautical miles from the Farallon Islands, and that the motor boat *C–55* could have traversed that distance in less than an hour.

The evidence for the Government at the trial further showed there were three vessels, the *Quadra*, the *Malahat*, and the *Coal Harbour*, chartered by a cargo-owning corporation called the Consolidated Exporters Corporation, Limited, of Canada, and loaded at Vancouver, British Columbia, with large cargoes of miscellaneous liquors; that the *Malahat* left Vancouver in May, officially destined to Buenaventura, Colombia; that the *Coal Harbour* left the same port in July with a similar cargo officially destined to La Libertad, San Salvador; and that the *Quadra* left there in September, officially destined to La Libertad. The captain of these vessels, while hovering near the Farallons, were constantly in touch with the convicted defendants Quartararo and Belanger at San Francisco and acted to some extent under their orders and directions. Quartararo was the most active agent of the conspiracy on shore. Belanger was a director of the Canadian corporation above named. He arranged for and had sent from San Francisco to the *Malahat* burlap containers to be used for landing the bottled liquor, thence to be transferred to the *Quadra*, and also gave the orders to transfer liquor from one vesesl to another, and to bring designated liquor from the vessels' cargoes to the shore. The *Quadra* was supplied with fuel oil from the shore, pursuant to prearrangement. None of the seagoing vessels above named proceeded to their destinations officially described in their ship's papers, but they cruised up and down between the Farallons and the Golden Gate, where the exchanges of liquor and sacks were made and where the needed oil was delivered, and from where the liquor was carried by small boats to a landing place called Oakland Creek in San Francisco. The evidence of the conspiracy, the landing of the liquor and the complicity of the convicted defendants therein was ample and practically undenied.

There was a preliminary motion to exclude and suppress the evidence of the ship and cargo. It was contended that the seizure was unlawful because not within the zone of the high seas prescribed by the treaty; and that the officers of the *Quadra* being prosecuted were protected against its use as evidence against them under the fourth and fifth amendments to the Federal Constitution. The motion was heard by the district court without a jury and was denied in an opinion reported in 3 Fed. (2d) 643. The evidence of the Government showed that the *Quadra* was seized at a distance from the Farallon Islands of 5.7 miles, and a test made later of the speed of the motor boat *C–55*, caught carrying liquor from her, showed that it could traverse 6.6 miles in an hour. There was a conflict as to the exact position of the *Quadra* at the time of the seizure. It was further objected that the speed of the motor boat was not made under the same conditions as those which existed at the time of the seizure.

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The question of the evidential weight of the test as well as of all the circumstances was for the judgment of the trial court. As it has been affirmed by the circuit court of appeals, we see no reason to reverse it.

It is objected that the question of the validity of the seizure should have been submitted to the jury. So far as the objection relates to the admission of evidence, it has already been settled by this court that the question is for the court and not for the jury. * * *

It is further objected, however, that the issue as to the place of the seizure, though submitted to and disposed of by the court in respect of the admissibility of evidence, should also have been submitted to the jury on the general issue. The Solicitor General answers, on the authority of Ker *v.* Illinois (119 U. S. 436) that an illegal seizure would not have ousted the jurisdiction of the court to try the defendants. But the Ker case does not apply here. It related to a trial in a State court, and this court found that the illegal seizure of the defendant therein violated neither the Federal Constitution, nor a Federal law, nor a treaty of the United States, and so that the validity of their trial after alleged seizure was not a matter of Federal cognizance. Here a treaty of the United States is directly involved, and the question is quite different.

But there is a reason why this assignment of error can not prevail. The issue whether the ship was seized within the prescribed limit did not affect the question of the defendant's guilt or innocence. It only affected the right of the court to hold their persons for trial. It was a necessary preliminary to that trial. The proper way of raising the issue of fact of the place of seizure was by a plea to the jurisdiction. A plea to the jurisdiction must precede the plea of not guilty. Such a plea was not filed. The effect of the failure to file it was to waive the question of the jurisdiction of the persons of defendants. * * * It was not error therefore to refuse to submit to the jury on the trial the issue as to the place of the seizure.

There was a demurrer to the indictment on the grounds that it did not state facts sufficient to constitute an offense against the United States; that the court had no jurisdiction to try those who were on the *Quadra* because seized beyond the 3-mile limit, and that the acts charged were not within the jurisdiction of the court. The conspiracy was laid at the Bay of San Francisco, which was within the jurisdiction of the court. The conspiracy charged was undoubtedly a conspiracy to violate the laws of the United States under section 37 of the Criminal Code. The court had jurisdiction to try the offense charged in the indictment and the defendants were in its jurisdiction because they were actually in its custody.

The defendants contend that on the face of the indictment and the treaty they are immune from trial. This requires an examination and construction of the treaty. * * *

The treaty indicates a considerate purpose on the part of Great Britain to discourage her merchant ships from taking part in the illicit importation of liquor into the United States, and the further purpose of securing without objection or seizure the transportation on her vessels, through the waters and in ports of the United States, of sealed sea stores and sealed cargoes for delivery at other destinations than the United States. The counterconsideration moving to the United States is the enlargement and a definite fixing of the zone of legitimate seizure of hovering British vessels seeking to defeat the laws against importation of liquor into this country from the sea. The treaty did not change the territorial jurisdiction of the United States to try offenses against its importation laws. That remained exactly as it was. If the ship could not have been condemned for such offenses before the treaty, it can not be condemned now. If the persons on board could not have been convicted before the treaty, they can not be convicted now. The treaty provides for the disposition of the vessel after seizure. It has to be taken into port for adjudication. What is to be adjudicated? The vessel. What does that include? The inference that both ship and those on board are to be subjected to prosecution on incriminating evidence is fully justified by paragraph 1 of Article II, in specifically permitted examination of the ship's papers and inquiries to those on board to ascertain whether not only the ship, but also those on board are endeavoring to import, or have imported, liquor into the United States. If those on board are to be excluded, then by the same narrow construction the cargo of liquor is to escape adjudication, though it is subject to search as the persons on board are to inquiry into their guilt. It is no straining of the language of the article therefore to interpret the phrase "the vessel may be seized and taken into a port

of the United States * * * for adjudication in accordance with such laws," as intending that not only the vessel but that all and everything on board are to be adjudicated. The seizure and the taking into port necessarily include the cargo and persons on board. They can not be set adrift or thrown overboard. They must go with the ship; they are identified with it. Their immunity on the high seas from seizure or being taken into port came from the immunity of the vessel by reason of her British nationality. When the vessel lost this immunity, they lost it, too, and when they were brought into a port of the United States and into the jurisdiction of its district court they were just as much subject to its adjudication as the ship. If they committed an offense against the United States and its liquor importation laws, they can not escape conviction, unless the treaty affirmatively confers on them immunity from prosecution. There certainly are no express words granting such immunity. Why should it be implied? If it was intended by the parties why should it not have been expressed? * * *

It is next objected that the convicted defendants taken from the *Quadra* were not triable under the indictment, because it charges an offense against them for which under the treaty neither they nor the *Quadra* could have been seized within the prescribed limit. It is very doubtful whether the objection was made in time and was not waived by the plea of not guilty; but we shall treat it as having been duly made. The contention of counsel on this point is that the treaty permits seizure only for the substantive offense of importing, or attempting to import, liquor illegally, and not for a conspiracy to do so.

These defendants were indicted under section 37 of the Criminal Code of the United States for having conspired at the Bay of San Francisco to violate the national prohibition act and the tariff act of 1922. Section 37 of the Criminal Code provides that if two or more persons conspire to commit an offense against the United States, and one or more of such parties commit any act to effect the object of the conspiracy, each shall be punished.

The national prohibition act (c. 85, ch. 3, 41 Stat. 305, 308), enacted October 29, 1919, provides:

"No person shall on or after the date when the eighteenth amendment to the Constitution goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

The tariff act of September 21, 1922 (42 Stat., c. 356, ch. 593 (b)), provides that if any person fraudulently or knowingly imports or brings into the United States, or assists in doing so, any merchandise contrary to law, he shall be fined or imprisoned. The importation of liquor into the United States is contrary to law, as shown by the prohibition act.

The indictment charged as overt acts that the defendants and each of them on the 10th and 29th of September and October 11th, by small boats from the *Quadra* landed illegally in San Francisco substantial quantities of liquor, and on the 12th of October, the day of the seizure, attempted to land another lot of liquor, but were defeated by the seizure.

The preamble of the treaty recites that the two nations, being desirous of avoiding any difficulties which might arise between them in connection with the laws in force in the United States on the subject of alcoholic beverages, have decided to conclude a convention for the purpose. Paragraph (1) of Article II provides for boarding, examination, and search to ascertain whether the ship or those on board were "endeavoring to import or have imported alcoholic beverages into the United States in violation of the laws there in force." The second paragraph of Article II permits the seizure on belief that "the vessel has committed or is committing or is attempting to commit an offense against the laws of the United States prohibiting the importation of alcoholic beverages."

Considering the friendly purpose of both countries in making this treaty, we do not think any narrow construction should be given which would defeat it. The parties were dealing with a situation well understood by both. In effect they wished to enable the United States better to police its seaboard by enabling it, within an hour's sail from its coast, beyond its territorial jurisdiction and on the high seas, to seize British actual or would-be smugglers of liquor and, if they were caught, to proceed criminally against them as if seized within the 3-mile limit for the same offenses, in reference to liquor importation. No particular laws by title or date were referred to in the treaty, but only the purpose of the contracting parties that vessels and men who are

caught under the treaty and are proven to have violated any laws of the United States, by which the importation of liquor is intended to be stopped through forfeiture or punishment, may be prosecuted after the seizure. The national prohibition act expressly punishes the importation of intoxicating liquor. The tariff act of 1922 declares it an offense to import intoxicating liquor. Section 37 of the Criminal Code makes it an offense to conspire to violate the prohibition act and the tariff act in respect of the importation of liquor, if the conspiracy is accompanied by overt acts in pursuance of it. The conspiracy act is the one most frequently used in the prosecution of liquor importations from the sea, because such smuggling usually necessitates a conspiracy in preparation for the landing. We think that any more limited construction would not satisfy the reasonable expectations of the two parties. Nothing in the words of the treaty makes such an interpretation a difficult one. The penalties under each act differ from those under the others. The tariff act and the conspiracy section each imposes a maximum penalty of two years, while that of the prohibition act is only six months, with a lower maximum of fine. The differences are clearly not sufficient to affect the construction. The substantive offense of importing liquor is in law a different one from the preparatory offense of conspiring to import liquor; but where, as here, the overt acts of the conspiracy include an actual importation of liquor and an attempt, it would seem to be quite absurd to hold that the conspiracy set forth does not come within the scope of the treaty. This is not a case for keeping within the technical description of a particular offense. It is not a formal extradition treaty where it is necessary, in protection of the persons to be extradited and carried from one country to another, that the crime for which they are to be tried should be described with nicety and precision to permit the operation of the principles recognized in the Rauscher case. Any law the enforcement of and punishment under which will specifically prevent smuggling of liquor should be regarded as embraced by the treaty. The British Government has advanced no contrary view. In the letter from the British embassy, of June 30, 1925, already referred to, the fact that the master and crew of the British schooner *Francis E*, of Nassau, were arrested and charged with conspiracy to violate the national prohibition laws, was not made the basis of complaint or protest but only of a request that the trial be expedited. The error assigned upon this point can not be sustained.

The next objection of the defendants taken from the *Quadra* is that on all the evidence they were entitled to a directed verdict of not guilty. They argue that they are charged with a conspiracy illegally to import, or to attempt to import, liquor into the United States when they were corporeally at all times during the alleged conspiracy out of the jurisdiction of the United States and so could commit no offense against it. What they are charged with is conspiring "at the Bay of San Francisco" with the defendants Quartararo and Belanger illegally to import liquor and the overt acts of thus smuggling and attempting to smuggle it. The conspiracy was continually in operation between the defendants in the United States and those on the high seas adjacent thereto, and of the four overt acts committed in pursuance thereof three were completed and took effect within the United States and the fourth failed of its effect only by reason of the intervention of Federal officers. In other words, the conspiring was directed to violation of the United States law within the United States by men within and without it, and everything done was at the procuration and by the agency of each for the other in pursuance of the conspiracy and the intended illegal importation. In such a case all are guilty of the offense of conspiring to violate the United States law whether they are in or out of the country * * *.

The judgment of conviction of the court of appeals is *affirmed*.

AMERICAN STEAM SCREW UNDERWRITER *v.* UNITED STATES OF AMERICA (MAUL *v.* U. S., 274 U. S. 501)

No. 655. October term, 1926.

Mr. Justice Van Devanter delivered the opinion of the court.

This is a libel of information for the forfeiture of the *Underwriter*, an American vessel enrolled and licensed for the coastwise trade. Five causes of forfeiture are set forth. One is that, in violation of section 4377 of the Revised Statutes the vessel was employed in a trade other than that for which she was licensed. Another is that, in violation of section 4337 of the Revised Statutes the vessel proceeded from the United States on a foreign voyage without giving up her enrollment and license and without being duly registered. The others are not now insisted on.

In December, 1924, officers of the Coast Guard seized the vessel on the high seas, 34 miles from the coast, and turned her over to the collector of customs at New London, Conn., whereupon the libel was filed and the vessel arrested.

The case was heard on an agreed statement of facts and an exception by the claimant Maul to the court's jurisdiction. The exception was sustained on the theory that the officers of the Coast Guard were without authority to seize the vessel at sea more than 12 miles from the coast, and a decree dismissing the libel was entered. The Circuit Court of Appeals held the exception untenable, sustained the two causes of forfeiture before stated, and accordingly reversed the decree. (13 Fed. (2d) 433.) The claimant petitioned for a review by this court on certiorari, and the petition was granted.

The claimant does not question here that the agreed facts establish the two causes of forfeiture, but does insist that the seizure was made without authority, and particularly that officers of the Coast Guard were not authorized to make such a seizure on the high seas more than 12 miles from the coast. The question has several phases which will be considered.

It is well to bear in mind that the case neither involves the seizure of a foreign vessel nor an exercise of asserted authority to board and search a vessel, domestic or foreign, for the purpose of detecting and thwarting intended smuggling. The seizure was of an American vessel, then on the high seas and more than 12 miles from the coast, which had become "liable to seizure and forfeiture" by reason of definite and accomplished violations of the law under which she was enrolled and licensed.

Section 45 of the Judicial Code declares: "Proceedings on seizures made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted." This provision originated with the judiciary act of 1789 (c. 20, sec. 9, 1 Stat. 73) and has remained in force ever since * * * and plainly recognizes that seizures for forfeitures may be made on the high seas. * * * True, it does not indicate how or by whom the seizures may be effected, but other provisions speak to the point. There is need to trace them from the beginning, and in doing so it should be in mind that officers of the Coast Guard are to be deemed customs officers, a matter which will be explained later on.

The act of July 31, 1789 (c. 5, 1 Stat. 29) regulating the collection of duties on the tonnage of vessels and on the importation of merchandise, contained several provisions declaring that vessels violating its provisions should be liable to seizure and forfeiture, and also a section (26) authorizing customs officers "to make seizure of and secure any ship or vessel, or merchandise, which shall be liable to seizure by virtue of this act, as well without as within their respective districts." That act was repealed by the act of August 4, 1790 (c. 35, 1 Stat. 145), which enlarged the prior regulations and contained a section (50) giving customs officers the same authority to make seizures that was given before. Next came the act of March 2, 1799 (c. 22, 1 Stat. 627), which again enlarged the regulations and contained a section (70) respecting seizures which was like that in the prior acts. This last provision is now section 3072 of the Revised Statutes and reads as follows:

"It shall be the duty of the several officers of the customs to seize and secure any vessel or merchandise which shall become liable to seizure by virtue of any law respecting the revenue, as well without as within their respective districts."

Along with the provision thus carefully preserved, the several acts contained other provisions distinct from it which authorized customs officers to board and search vessels bound to the United States, and to inspect their manifests, examine their cargoes and, prevent any unlading while they were coming in. A supplement act of July 18, 1866 (c. 201, 14 Stat. 178), enlarged that provision by declaring that, if it appeared to the officer making the search that there had been a violation of the laws of the United States whereby the vessel or any merchandise thereon was liable to forfeiture, he should make seizure of the same. The provision so enlarged became section 3059 of the Revised Statutes. In the early acts the authority to board and search was limited not only to vessels bound to the United States but to such as were within the territorial waters of the United States or within 4 leagues (12 miles) of the coast. But

in the act of 1866 and section 3059 of the Revised Statutes the words expressing these restrictions were omitted. Possibly the omission was not significant, for the same restrictions were expressed in section 3067 of the Revised Statutes, which related to the boarding and searching of vessels.

The act of September 21, 1922 (c. 356, 42 Stat. 858, 979), repealed sections 3059 and 3067 of the Revised Statutes and enacted a provision dealing with the same subject and reading as follows:

"SEC. 581. *Boarding vessels.*—Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector, may at any time go on board of any vessel or vehicle at any place in the United States or within 4 leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package, on board, and to this end to hail and stop such vessel or vehicle, if under way and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle is liable to forfeiture, it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation.

"Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within 4 leagues of the coast of the United States and hail, stop, and board such vessels in the enforcement of the navigation laws and arrest, or, in the case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws."

The last paragraph of this provision relates to the apprehension and arrest of individuals violating the navigation laws, not to the seizure of vessels, and neither party bases any contention or argument on it. So it may be passed as without bearing here.

But the claimant contends and the district court ruled that the first paragraph is now the sole source and measure of the authority of Coast Guard officers to seize vessels, and that as it provides only for seizure within the United States or within 12 miles of the coast, a seizure outside these limits is unlawful. The contention is faulty in that it puts aside section 3072 of the Revised Statutes, before quoted, which authorizes customs officers to seize any vessel "liable to seizure by virtue of any law respecting the revenue" and declares, without limiting words, that this authority may be exercised "as well without as within their respective districts."

Without doubt the provision in the act of 1922 is intended to take the place of sections 3059 and 3067 of the Revised Statutes. It deals with the same subject and is accompanied by an express repeal of those sections. But it is not accompanied by a repeal of section 3072, and there is otherwise no reason for thinking it is intended to repeal or disturb that section. While the new provision and section 3072 are closely related and both are directed to the protection of the revenue, they are distinct, free from real repugnance, and well may stand together. One provides primarily for boarding and searching vessels, within prescribed limits, to discover and prevent intended smuggling, and secondarily for the prompt seizure of the vessel by the searching officer if the search disclose a violation of law which subjects her to forfeiture. The other provides broadly, and without restriction as to place, for the seizure of vessels which, through violation of the laws respecting the revenue, have become liable to seizure. While the former restricts the authority to board and search to particular limits—the territorial waters and the high seas 12 miles outward from the coast—it does not purpose to lay such a restriction on seizures Where the seizure is incidental to a boarding and search under that provision the presence of the vessel within the prescribed limits operates to fix the place of seizure. Possibly the restriction may be said to affect such a seizure, but only in a limited sense. In other seizures, of which there are many, the restriction has no bearing and no effect. So no reason appears for thinking Congress clearly intended to displace the general and long-continued provision in section 3072. In this situation effect should be given to the familiar rule that in construing altered revenue laws "the whole system must be regarded in each alteration, and no disturbance allowed of existing legislative rules of general application beyond the clear intention of Congress. * * *.

One question is whether the vessel's liability to seizure was "by virtue of any law respecting the revenue." The liability arose from a violation of sections 4337 and 4377 of the Revised Statutes, in that the vessel, being enrolled and licensed for the coastwise trade, proceeded on a foreign voyage without giving up her enrollment and license and without being duly registered, and was employed in a trade other than that for which she was licensed. The sections violated are found in a subdivision of the Revised Statutes entitled "Regulation of Vessels in Domestic Commerce," but the arrangement of sections in the revision is without special significance. (Rev. Stat. sec. 5600.) That subdivision includes several provisions designed to regulate commerce by vessels and also to protect the revenue, these being related subjects. A reading of the sections violated in connection with others in the same subdivision makes it plain that they are directed to the protection of the revenue, and therefore they come within the terms of section 3072. That they are also regulations of commerce by vessels does not make them any the less laws respecting the revenue. * * *

The remaining question relates to the meaning of the clause indicating where the officers may seize. It says "as well without as within their respective districts." Two constructions are suggested—one restricting the natural sense and treating the clause as if saying "as well within other customs districts as within their own"; and the other accepting the natural sense. The difference is that one excludes and the other includes the sea outside customs districts. In actual practice the latter construction has been adopted and it appears to be right. Besides giving effect to the natural import of the clause, it is better adapted to the attainment of the purpose of the section. If vessels violating the revenue laws and thereby incurring liability to forfeiture could escape seizure by departing from or avoiding waters within customs districts the liability to forfeiture would be of little practical effect in checking violations; and it is most improbable that Congress intended to leave the avenues of escape thus unguarded. The terms it has used are easily broad enough to meet the situation effectively. * * * If Congress were without power to provide for the seizure of such vessels on the high sea, a restrictive construction might be justified. But there is no want of power in this regard. The high sea is common to all nations and foreign to none; and every nation having vessels there has power to regulate them and also to seize them for a violation of its laws. * * *.

It follows that the seizure in this instance by the officers of the Coast Guard was lawful and therefore that the exception to the District Court's jurisdiction was ill grounded. Whether if the seizure—made by Federal officers—were unlawful the ruling in Dodge *v.* United States, 272 U. S. 530, would apply need not be considered.

The decree of the circuit court of appeals is *affirmed.*

AMERICAN STEAM SCREW UNDERWRITER *v.* UNITED STATES OF AMERICA (MAUL *v.* U. S., 274 U. S. 501)

No. 655. October term, 1926.

Concurring opinions by Justices Brandeis and Holmes. (See also opinion by Justice Van Devanter.)

* * * * * * *

When the Revenue Cutter Service was established its duties were limited to the protection of the revenues. In 1793 the duty of enforcing also the navigation laws was imposed. Thereafter, from time to time, the duty of enforcing many other laws relating to transactions involving marine operations were added. Revenue cutters became thus America's civil ocean patrol. But their service is not limited to enforcing our municipal law. They have been employed also in protecting the lives and property of Americans against foreigners in international controversies falling short of war, and they have served during wars in operations against the enemy. Revenue cutters are armed cruisers. Naval discipline, drill, and routine prevail on all the ships. Their officers are commissioned, and their men enlisted, like officers and men in the Army, Navy, and Marine Corps. The Secretary of the Treasury assigns them to a particular vessel, and the vessel is usually assigned to a particular station, but he may make such transfer of an officer from one vessel to another, and of the vessel from one station to another, as he deems desirable. Both the Sec-

retary of the Treasury and the President may direct any revenue cutter to cruise in any waters in order to perform any duty of the service. (Wiley *v.* United States, 40 Ct. Cl. 406; act of April 21, 1910, c. 182, sec. 2, 36 Stat. 326; Regulations of Coast Guard (1923), art. 101.)

With the enlargement of the revenue cutters' functions came necessarily an extension of the field of their operations. They range the seas coastwise or far into the ocean, as occasion and the particular duties demand. The earlier regulations issued by the Secretary of the Treasury included among the laws to be enforced those prohibiting the slave trade, the laws to preserve neutrality, laws for the suppression of piracy, and the law to prevent the cutting and removing of timber from public lands "for exportation to any foreign country." Among the duties recited in the later regulations are lending medical aid to vessels of the United States engaged in deep-sea fisheries; enforcing the sponge fishing law; assisting vessels in distress upon the oceans and the Great Lakes; removing derelicts; suppressing mutinies; patrolling the North Pacific and the Bering Sea for the purpose of enforcing the laws for the protection of the fur seal and sea otter; and the service of ice observation and patrol, pursuant to the convention of January 20, 1914, designed to promote safety on the North Atlantic, following the international conference of November 12, 1913. By no act or regulation is the field of activity restricted to the 12-mile limit. Some of the duties imposed upon revenue cutters involve necessarily service hundreds of miles from any American coast.

Forfeiture of the offending vessel is a punishment commonly prescribed for violation of our navigation laws, and of many other laws which revenue cutters are required to aid in enforcing. Of these there are many which are in no way concerned with the collection of the revenue. In order to enforce these laws adequately, it is necessary that some officials of the Government shall have authority to seize American vessels which are found violating them. Many of the offenses are of such a character that they can be committed anywhere on the high seas. The challenge of the authority of the Coast Guard to make a seizure beyond the 12-mile limit presents, therefore, questions affecting the enforcement not only of the navigation laws but also of the customs laws, the national prohibition law, and others. If the officers of revenue cutters were without authority to seize American merchant vessels found violating our laws on the high seas beyond the 12-mile limit or to seize such vessels found there which are known theretofore to have violated our laws without or within those limits, many offenses against our laws might to that extent be committed with impunity, for clearly no other arm of the Government possesses such authority.

The questions presented necessitate inquiry into early and recent administrative practice, as well as into legislation and judicial decisions. I shall consider first whether officers of revenue cutters had authority to seize on the high seas for violation of the navigation laws prior to the tariff act of 1922; then, whether that act abridged their authority.

First. The provisions of the navigation laws alleged to have been violated, have been in force since the beginning of our Government. (Act of February 18, 1793, c. 8, secs. 8, 32, 1 Stat. 305, 308, 316; Rev. Stat., secs. 4337, 4377.) The express authority to board and search in terms beyond the territorial limits of the United States appeared first in sections 31 and 64 of the customs collection act of August 4, 1790 (c. 35, 1 Stat. 145, 164, 175), which established the Revenue Cutter Service. The authority there conferred upon it was to board and search within "the United States or within 4 leagues (12 miles) of the coast." It applied to all vessels, foreign as well as American, but was limited to inbound vessels. These sections, which granted power to board and search, contained no express grant of power to seize. Express statutory authority to seize in terms beyond the territorial limits of the United States for violation of its laws was not conferred, until the tariff act of 1922, in respect to any offense except in those few instances in which Congress, in pursuance of specific treaties, provided that any vessel, foreign or American, might be seized. We are concerned here only with the right of the Coast Guard to seize an American vessel for violation of a law applicable solely to such vessels.

The only express statutory authorization upon which, prior to the tariff act of 1922, a claim of power in any official to seize a vessel on any waters for violation of the navigation laws could possibly be predicated were Section 27 of the act of February 18, 1793 (c. 8, 1 Stat. 305, 315), a navigation law, which was repealed by its omission from the Revised Statutes; and section 2 of the act of July 18, 1866 (c. 201, 14 Stat. 178), a customs collection law, which was embodied in section 3059 of the Revised Statutes as a part of "Title XXXIV, Collection of duties upon imports"; and section 3072 of the Revised Statutes, which dealt with seizures for violation of "any law respecting the revenue." Section 3059 authorized "any officer of the customs, including" those "of a revenue cutter," to "go on board of any vessel * * * to inspect, search, and examine the same * * *; and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby * * * such vessel * * * is liable to forfeiture, to make seizure of the same * * *"

The authority which sections 3059, 3072, and the earlier acts, expressly conferred upon all officers "of the customs" was to seize "as well without as within his district." No distinction was there made between foreign and domestic vessels, nor between inbound and outbound vessels. The clause appeared first in the act of July 31, 1789 (c. 5, sec. 26, 1 Stat. 29, 43), the earliest law regulating the collection of customs. As there used, the clause clearly meant only that collectors, naval officers, and surveyors should have the authority to seize in other districts of the United States besides the particular ones to which they were respectively appointed, for the clause antedated the first express authorization of either search or seizure without the territorial limits of the United States; and antedated also the establishment of the Revenue Cutter Service. Did the phrase "without * * * his district," when used in section 3059, continue to mean within some other customs collection district of the United States, or did it acquire the new meaning of anywhere, even without the territorial waters of the United States? (Compare Taylor *v.* United States, 3 How. 197, 205.)

If the former meaning is the true one, there was prior to the tariff act of 1922 no express authority in officers of revenue cutters to seize for violation of any law beyond the territorial limits of the United States. If the latter meaning is the true one, not only officers of revenue cutters, but also all other customs officers were given by section 3059 express authority to seize anywhere on the high seas any vessel, foreign or American, found violating our laws In my opinion, the former meaning is clearly the true one. Congress can not have intended to confer the general authority to seize foreign vessels upon the high seas, and the clause in question is used in section 581 of the act of 1922 in the same sentence with an express territorial limitation. But it does not follow that American vessels violating our laws beyond the territorial limits could not be seized. Authority to seize American vessels there was conferred upon officers of revenue cutters by implication. They possessed the authority as an incident of their office of ocean patrol. They are officers of the branch of the Government charged with the faithful execution of the laws. Wherever on the high seas they were charged with enforcing compliance with our laws there they were, in my opinion, authorized to seize American vessels, regardless of the distance from our coast. (Compare United States *v.* Macdaniel, 7 Pet. 1, 15; United States *v.* Tingey, 5 Pet. 115, 126; 28 Op. Atty. Gen. 121, 124, 549, 552.)

There is no limitation upon the right of the sovereign to seize without a warrant vessels registered under its laws, similar to that imposed by the common law and the Constitution upon the arrest of persons and upon the seizure of "papers and effects." (See Carroll *v.* United States, 267 U. S. 132, 151–153.) Smuggling is commonly attended by violation of the navigation laws. From the beginning of our Government officers of revenue cutters have, for the purpose of enforcing the customs laws, been expressly authorized to board and search inbound vessels on the high seas within 12 miles of our coast. It is not to be lightly assumed that Congress intended to deny to revenue cutters so engaged authority to seize American vessels found to be violating our navigation laws. Nor is it lightly to be assumed that Congress intended to deny to officers of revenue cutters engaged in enforcing other laws of the United States beyond the 12-mile limit the authority to seize American vessels found to be violating our navigation laws beyond those limits.

From the beginning of our Government it has been the practice of revenue cutters to make such seizures. The official records and judicial decisions show that revenue cutters were employed early in our history, and that they have been employed continuously since, in enforcing our navigation laws upon the high seas regardless of distance from the coast, and that, whether operating within the United States or without, they have, regardless of distance from the coast, seized American vessels found violating our laws, without regard to

whether the laws violated related to the revenue. Congress has by its action sanctioned this exertion of power. It supported the activities of the service by ever increasing appropriations. It equipped the Coast Guard before the tariff act of 1922 with able cruising cutters, many of which were engaged largely in patrol beyond the 12-mile limit. To seize anywhere on the high seas American vessels found violating our laws was thus, I think, within the implied authority of its officers before the act of 1922. It remains to consider whether that act abridged the authority theretofore possessed.

Second. The tariff act of 1922 includes as Title IV a revision of the customs administrative provisions then in force. (42 Stat. 858, 948, et seq.) In section 642 it recites the provisions of the earlier law which the act repealed. Among these are sections 3059 and 3067 of the Revised Statutes. The former is the section which conferred upon officers of the customs express power to seize "within or without his district." The latter is the section which conferred upon them authority to board and search inbound vessels within 12 miles of our coast. The sections parallel to section 3067, relating specifically to officers of revenue cutters, first found in section 64 of the act of 1790, reenacted as section 99 of the act of 1799, and again as sections 2760, 2761, 2762 of the Revised Statutes, were neither repeated nor repealed by the Act of 1922. Nor did it repeat or repeal section 3072. For the provisions repealed it substituted section 581, which, so far as material, is as follows:

"Boarding vessels.—Officers of the customs or the Coast Guard and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector, may at any time go on board of any vessel or vehicle at any place in the United States or within 4 leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package on board,, and to this end to hail and stop such vessel or vehicle, if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle, or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle is liable to forfeiture, it shall be the duty of such officer to make seizure of the same and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation."

The provision quoted above was adopted by Congress without substantial change from the draft of a bill contained in the report "Upon the Revision of the Customs Administrative Laws" made by the United States Tariff Commission to the Committee on Ways and Means in 1918, and resubmitted in 1921. Whether intentionally or not, the paragraph of section 581 quoted above introduced two changes into the statutory law. Unlike the earlier statutes, it did not limit to inbound vessels the right to board and search, and, unlike the earlier statutes, it apparently conferred (through the inclusion of the grant of authority to seize in the same paragraph with the grant of authority to board or search) upon all customs officers the right to seize any vessel on any waters within the 12-mile limit. The reports of the commission and those of the committees of Congress discuss many proposed changes in the customs administrative laws, but nowhere in the reports of the commission or of Congress or in the statute enacted is there a suggestion of purpose to abridge by this provision the authority theretofore possessed by the Coast Guard to make seizure on the high seas. It seems clear that Congress did not by this revision intend that the power to seize on the high seas for violation of laws respecting the revenue should remain, but that the similar power to seize for violation of other laws should be taken away.

Since, in my opinion, Revised Statutes, section 3059, had not conferred any express power to seize beyond territorial waters, I do not think its repeal shows any intention to take away the then existing implied power of the Coast Guard to seize American vessels anywhere on the high seas, for violation of any law of the United States. There is no foundation for the assumption of the claimant that the first paragraph of section 581 was intended as the exclusive grant of the power to seize. The primary purpose of that paragraph was not to provide for the seizure of American vessels of known or suspected guilt. It was to facilitate, by means of boarding and examination of manifest before arrival in port, both the entry of admittedly innocent vessels and the collection of revenues. This end was furthered by enabling customs officers to board and search any vessel, foreign or domestic, within the stated limits,

without the necessity of establishing probable cause. The authority to board and search foreign vessels beyond the territorial limits would doubtless not have been implied as a mere incident of the customs officers' duties, and it is probable that the authority to board and search American vessels in the absence of probable cause was not regarded as clear.

Other action of Congress taken at about the same time shows that Congress had no purpose to abridge the Coast Guard's activities or powers. The appropriation acts make provision for large increases in equipment and personnel to enable it to combat the increased smuggling operations following upon the enactment of the national prohibition law. Moreover, conventions were negotiated with Great Britain and other foreign nations to secure permission to seize their vessels on the high seas if found engaged in smuggling operations. Neither in the negotiations nor in the conventions was any reference made to a 12-mile limit. The limitation agreed upon was an hour's run from our coast. The distance covered by the hour's run would often greatly exceed 12 miles from our coast. But Congress did not deem it necessary to enact supplementary legislation in order to make the conventions effective.

In my opinion, then, the Coast Guard is authorized to arrest American vessels subject to forfeiture under our law, no matter what the place of seizure and no matter what the law violated.

Mr. Justice Holmes joins in this opinion.

UNITED STATES *v.* LEE (274 U. S. 559)

No. 752. Argued March 8, 1927. Decided May 31, 1927.
Mr. Justice Brandeis delivered the opinion of the court.

In the Federal court for Massachusetts Lee and two others, all apparently American citizens, were indicted for consipiring within the United States to violate sections 591 and 593 of the tariff act of 1922 (c. 356, 42 Stat. 858, 981, 982), and section 3 of the national prohibition act, October 28, 1919 (c. 85, Title II, 41 Stat. 305, 308). The defendants pleaded not guilty. Lee and one other were convicted. Lee sued out a writ of error. The court of appeals (one judge dissenting) vacated the judgment on the ground that evidence had been admitted which was obtained by an illegal search and seizure. (14 F. (2d) 400.) This court granted a writ of certiorari. (273 U. S. 686.)

On the afternoon of February 16, 1925, the boatswain of a Coast Guard patrol boat saw a motor boat of the numbered type proceed in a southeasterly direction from Gloucester Harbor. He followed her at a distance of 500 yards, lost sight of her after sundown, apparently in a fog, at a point about 20 miles east of Boston Light, and discovered her later alongside the schooner *L'Homme* in a region commonly spoken of as "rum row," at a point 24 miles from land. On board the motor boat were Lee, two associates, and 71 cases of grain alcohol. The boatswain arrested the three men, seized the motor boat, and took her with them and the liquor to Boston. There this indictment was found. It does not appear that the Government instituted proceedings to forfeit either the motor boat or the liquor. The motor boat, which had a length of about 30 feet, was registered in Lee's name.

The boatswain testified that when he discovered the motor boat alongside the *L'Homme:* "I put a searchlight on her and told those aboard the motor boat to put up their hands. In the boat I found the three defendants, McNeil, Vieria, and Lee. I looked the boat over and found a number of cans of alcohol on board it. I searched the defendants for weapons and found none. I put two of my men on board the motor boat and took the boat and the defendants to Boston."

The liquor does not appear to have been put in evidence. The deputy surveyor of the port testified that upon the motor boat's arrival in Boston, he examined the cases on board and found that they contained alcohol, 95° proof, and that Lee, when interrogated, said: "I ran the engine, and the first thing I knew I was alongside a schooner. I did not see any cases on our boat until captured by the revenue cutter." The testimony of the deputy surveyor as to what he found on the motor boat and that of the boatswain as to what he found upon his examination of the motor boat at the time of his command to those on board to throw up their hands was admitted over Lee's objection and subject to exception duly made.

The court of appeals, expressing disagreement with the conclusion reached in the *Underwriter* (13 F. (2d) 433), held that the Coast Guard is not au-

thorized to visit and search American vessels on the high seas more than 12 miles from the coast; that the seizure there made was without authority; that it was illegal, since it did not appear that the Government had ratified it by the institution of legal proceedings to enforce the forfeiture; that the search and seizure having been illegal, knowledge gained as a result of the illegal search could not be put in evidence (Weeks *v.* United States, 232 U. S. 383), and that the testimony of the deputy surveyor and of the boatswain was wrongly admitted.

The Government contends that the Coast Guard has authority to visit, search, and seize an American vessel on the high seas beyond the 12-mile limit when probable cause exists to believe that our law is being violated; that it has authority also to arrest persons on such vessel whom there is reason to believe are engaged in committing a felony; that here probable cause was shown that the crime, a felony, was being committed; that if any search, within the meaning of the Constitution, was made of the motor boat before she reached port it was valid as an incident of a lawful arrest of persons whom the officer had reasonable cause to believe were engaged in committing a felony; that the constitutional prohibition against search and seizure without a warrant is not applicable to this small motor boat which does not appear to have been used as a place of residence; and that it does not appear that any search was, in fact, made before the motor boat was examined in Boston by the deputy surveyor, within the territorial limits of the United States, where search is clearly valid.

In the main the contentions of the Government are, in our opinion, well founded. Officers of the Coast Guard are authorized, by virtue of Revised Statutes, section 3072, to seize, on the high seas beyond the 12-mile limit, an American vessel subject to forfeiture for violation of any law respecting the revenue. (Maul *v.* United States, the *Underwriter.*) From that power it is fairly to be inferred that they are likewise authorized to board and search such vessels when there is probable cause to believe them subject to seizure for violation of revenue laws and to arrest persons thereon engaged in such violation. * * * The authority asserted is not as broad as the belligerent right to visit and search even without probable cause. (Compare the *Marianna Flora*, 11 Wheat. 1, 42.) In the case at bar, there was probable cause to believe that our revenue laws were being violated by an American vessel and the persons thereon in such manner as to render the vessel subject to forfeiture. Under such circumstances search and seizure of the vessel and arrest of the persons thereon by the Coast Guard on the high seas is lawful, as like search and seizure of an automobile and arrest of the persons therein by prohibition officers on land is lawful. * * * As the Coast Guard was authorized to seize the motor boat, the search of her by the deputy surveyor within the territory of the United States was, in any event, auhorized under section 581 of the tariff act of 1922. The failure of the Government to institute thereafter proceedings for forfeiture of the motor boat and the liquor did not by retroaction render illegal either the seizure or the search.

Moreover, search, if any, of the motor boat at sea did not violate the Constitution, for it was made by the boatswain as an incident of a lawful arrest. * * * But no search on the high seas is shown. The testimony of the boatswain shows that he used a searchlight. It is not shown that there was any exploration below decks or under hatches. For aught that appears, the cases of liquor were on deck and, like the defendants, were discovered before the motor boat was boarded. Such use of a searchlight is comparable to the use of a marine glass or a field glass. It is not prohibited by the Constitution. * * * A later trespass by the officers, if any, did not render inadmissible in evidence knowledge legally obtained. * * *. *Reversed.*

Extract from the *Marianna Flora* (11 Wheat. 1, 42). Opinion delivered by Justice Story, Supreme Court of the United States, 1826:

In considering these points, it is necessary to ascertain what are the rights and duties of armed and other ships, navigating the ocean in time of peace. It is admitted, that the right of visitation and search does not, under such circumstances, belong to the public ships of any nation. This right is strictly a belligerent right, allowed by the general consent of nations in time of war, and limited to those occasions. It is true, that it has been held in the courts of this country that American ships offending against our laws, may afterwards be pursued and seized upon the ocean and rightfully brought into our ports for adjudication. This, however, has never been supposed to draw after it any right of visitation or search. The party, in such case, seizes at his peril. If he establishes the forfeiture, he is justified. If he fails, he must make full compensation in damages.

EXTRACTS FROM IMPORTANT DECISIONS BY CIRCUIT COURTS OF APPEAL

BRITISH SCHOONER PESAQUID *v.* UNITED STATES (2 F. (2D) 208)

United States Circuit Court of Appeals, fourth circuit. No. 2206, October 21, 1924. Opinion of the court:

WOODS, *Circuit Judge:* * * * There is little dispute as to the facts which we regard material. The defendant Latham was the master and the defendants Cowart and Schwartz were the supercargoes on the schooner *Pesaquid*, a vessel flying the British flag and owned by the Bahama Fisheries Co., Ltd., of Nassau. According to her papers her destination was St. Pierre-Miquelon. She left Nassau on July 5, 1923, with a cargo of 3,500 cases of whisky owned by Pender, Collins, and Byrum, of Nassau. She did not make for her pretended destination, but on July 20, 1923, was sighted by the Coast Guard Cutter *Manning* about 17 miles east of Cape Henry, Va. The *Manning* followed the *Pesaquid* to the limit of the waters she was assigned to guard. The *Pesaquid* was next sighted by the cutter *Mascoutin* on July 30, 1923, near Hog Island, Va., headed away from her pretended destination. The direct voyage from the Bahamas to the Virginia Capes should have been made by the schooner in five to seven days. The officers of the *Mascoutin* kept watch on the whisky-laden schooner and seized her when, according to their testimony, she approached within 2 miles of the Virginia coast.

After leaving Nassau and while sailing along the coast of the United States the supercargoes had sold from the schooner to boats coming from the shore about 1,350 of her cargo of 3,500 cases of whisky. The testimony on behalf of the defendants was to the effect that the schooner was not at any time within the territorial waters of the United States. The issue of the fact thus made as to possession and transportation of whisky in the United States was properly submitted to the jury, and their findings thereon against the defendants is binding here.

The officers of the *Pesaquid* testified that if the schooner was sailed into the territorial waters of the United States, the entry was accidental and involuntary when she was on her voyage back to Nassau for water and food supplies. On this point the district judge charged the jury to acquit if they believed the schooner involuntarily crossed the line while sailing for Nassau with no intention of stopping or unloading any part of her cargo of whisky in the United States. Conversely, the instruction was given that even the involuntary crossing of the vessel into the territorial waters of the United States while carrying a cargo of whisky would be criminal if the vessel was sailing along the coast with the intention of landing the whisky. Defendants had no ground to complain of this instruction. One who ranges along the land or water line of any country with the design of aiding in the subversion of its laws challenges that country to enforce its laws and assumes the risk of his own mistakes and the action of wind and tide and all the forces of nature. * * *

It is argued on behalf of the defendants, however, that they should escape because the aiding and abetting in the crime of those who sold in the United States whiskey purchased from the ship was on the high seas outside the territorial waters of the United States. The facts do not bring the case within the general rule that the character of an act as lawful or unlawful must be determined solely by the law of the country or place where the act is done. The defense, therefore, that the defendants sold the whisky on the high seas where it was lawful to sell it is not available. The defendants being under arrest in the United States, it makes no difference that they were outside the jurisdiction when by aiding and abetting they became principals in crime committed in the United States. They could not have been extradited as fugitives from justice because they had not fled from the United States, but being under arrest in the jurisdiction they could be tried and convicted as participants in the crime.

The Supreme Court has laid down the rule that if two or more persons form a conspiracy in one State and one of them commits the overt act in another State a conspirator who never enters the State where the overt act is done during the currency of the conspiracy may nevertheless be tried and convicted in the State where the overt act is committed.

* * * * * * *

The conclusions we have stated on the merits dispose of all the exceptions made to the admission of testimony.

STEAM TUG ESTHER M. RENDLE *v.* UNITED STATES (13 F. (2D) 839)

United States Circuit Court of Appeals for the First Circuit. No. 1857. October term, 1924. Opinion of the court (September 9, 1925).

JOHNSON, *J.*: This is an appeal from a decree of the District Court of the United States for the District of Massachusetts dismissing a libel of information in admiralty to forfeit the steam tug *Esther M. Rendle* under sections 4337 and 4377 of the Revised Statutes of the United States, the former being section 8086 and the latter section 8132 of the United States Compiled Statutes 1916, which are as follows:

"Comp. St., sec. 8086 (R. S. sec. 4337): If any vessel, enrolled or licensed, shall proceed on a foreign voyage, without first giving up her enrollment and license to the collector of the district comprehending the port from which she is about to proceed on such voyage, and being duly registered by such collector, every such vessel, together with her tackle, apparel, and furniture, and the merchandise so imported therein, shall be liable to seizure and forfeiture.

"Comp. St., sec. 8152 (R. S. sec. 4377): Whenever any licensed vessel is transferred, in whole or in part, to any person who is not at the time of such transfer a citizen of and resident within the United States, or is employed in any other trade than that for which she is licensed, or is found with a forged or altered license, or one granted for any other vessel, such vessel with her tackle, apparel, and furniture, and the cargo, found on board her, shall be forfeited. But vessels which may be licensed for the mackerel fishery shall not incur such forfeiture by engaging in catching cod or fish of any other description whatever.

The essential allegations of the libel are:

"That the said steam tug at the time of said seizure and at all times herein mentioned was a vessel duly licensed for the coasting trade in conformity with the statutes of the United States in such cases made and provided, said license containing a clause that it shall not be used in any trade or business whereby the revenue of the United States may be defrauded.

"That on or about the 6th day of February, 1925, the said steam tug, her master and crew, did proceed on a foreign voyage, to wit, from Provincetown in said district to a certain vessel on the high seas, a more particular description of which is to your libellant unknown, hovering off the coast of the said district about 20 miles from the coast thereof, without first giving up her enrollment and license to the collector of the district comprehending the said Provincetown, to wit, Boston, and without being duly registered by said collector; that the said steam tug in proceeding on the said voyage did have in tow a certain other vessel, to wit, a lighter, sometimes known as the *Pratt*, or as *No. 10*, and did place the said lighter alongside the aforesaid unknown vessel lying on the high seas as aforesaid; that certain merchandise, to wit, a large number of cases of alcohol, were unladen from the said unknown vessel on to the said lighter, and that the said steam tug thereafter towed the said lighter, containing the said alcohol to and into the United States at said Boston harbor; that the said unlading of said alcohol and said transportation of said alcohol to and into the United States was in violation of the customs laws of the United States and in fraud of the revenue of the United States and was known to be so by those persons at the time in charge of the said steam tug."

The claimant filed an answer and included the following exception:

"And without waiver of any matter in the above answer, the claimant excepts to the libel filed in this cause.

"Because the allegations thereof do not disclose any legal cause of forfeiture of the said steam tug; because the allegations of the libel do not disclose that the said steam tug proceeded on a foreign voyage within the intent and meaning of the statutes; because the allegations of the libel do not disclose that the steam tug, if it did the acts alleged in the libel, committed any breach of the statutes of the United States in regard to unlading and transporting of said alcohol; because the libel is indefinite and does not sufficiently describe the customs laws of the United States alleged to have been violated."

The district court heard the case upon the exception, which is equivalent to a demurrer, and considered the following questions only:

(1) Did the *Esther M. Rendle* proceed on a foreign voyage?

(2) Was the tug engaged in any other employment than that specified in its license?

The only case upon which the Government relies in support of its contention that the tug was bound upon a foreign voyage is the *Alex Clark* (294 Fed. 904), a case in the southern district of New York.

We can not follow the conclusion reached by the learned district judge in that case that "all places on the high seas are foreign to the United States," and "that any point outside the territorial limits of the United States is a point foreign to the United States," nor do we think it is supported by the decisions of the Federal courts.

* * * * * * *

In the *Eliza*, supra, Judge Story said: "And it is urged that the being bound to the high seas, without the jurisdictional limits of the United States, is being bound 'to a foreign place' within the meaning of the statute. * * * It is clear to my mind, that a 'foreign port or place' in the statute means a port or place exclusively within the sovereignty of a foreign nation. Such has been the construction of the same words in the third section of the act of the 9th of January of 1808 (c. 8), by the Supreme Court of the United States. Such has been the uniform construction in the district and circuit courts of this circuit."

We think the learned judge of the district court was right in ruling "that the *Rendle* did not make a foreign voyage within the meaning of the statute."

The libel contains an allegation that the license granted to the tug has in it a provision that it shall not be used for any trade or business whereby the revenue of the United States may be defrauded, and also that the transportation of said alcohol to and into the United States was in violation of the customs laws of the United States and a fraud upon the revenue of the United States; and that this "was known to be so by those persons at the time in charge of the said steam tug."

The claimant in his answer neither admitted nor denied the allegations of the libel and called for proof, stating that if any of "the alleged illegal acts" were proved, the same were done without his knowledge or privity. Whether they were done with knowledge or not is immaterial. * * *

Although the tug was licensed to engage in coastwise trade, its employment in illegal trade or traffic, whether coastwise or foreign, would subject it to forfeiture under R. S. 4377, as being employed in trade other "than that for which she is licensed." * * *

While the allegation in the libel is general and does not state what particular customs laws of the United States were violated by the transportation of alcohol or how this transportation was in fraud of the revenue of the United States, we think it is sufficient under the rules of admiralty pleadings, which do not require the exactness of common-law pleadings, to compel the claimant to answer to the merits of the case.

While the alcohol was not transported aboard the tug, yet the libel alleges that the tug did transport the same when loaded upon the lighter and the transportation of intoxicating liquors is prohibited under act of October 28, 1919 (ch. 85, title 2, sec. 3). * * *

The decree of the district court is reversed, the exception overruled, and the case is remanded to that court for further action not inconsistent with this opinion.

GAS SCREW YACHT CONEJO *v.* UNITED STATES (16 F. (2D) 264)

United States Circuit Court of Appeals for the First Circuit. Nos. 2032 and 2033. December 6, 1926. Opinion of the court:

ANDERSON, J.: In these two cases, heard together, the court below held the *Conejo* subject to forfeiture, and accordingly dismissed the possessory libel in No. 2032 and entered a decree of forfeiture in No. 2033, filed by the United States.

The *Conejo* was licensed as a pleasure yacht under Compiled Statutes, section 7804, which provides that such vessels "shall be liable to seizure and forfeiture for any violation of the provisions of this title"; and section 7804 provides that "no licensed yacht shall engage in any trade or in any way violate the revenue laws."

The opinion of the learned district judge (10 Fed. 2d, 256), though brief, leaves little to be added. It states the facts and the issues of controlling importance. The evidence shows conclusively that the *Conejo* was engaged in rum running off the coast of Maine; that in August, 1925, she landed a cargo of several hundred cases of whisky at Freeport, Me. This was a breach of her license, by transporting merchandise for pay, as the court below held in this case, and as Judge Morton held in a like case in the *Herreschoff*. (6 Fed. 2d, 414.)

We are not prepared to adopt the contention now made by the learned counsel for the appellant, that this court should hold the *Abby*. (Fed. Case No. 14.) * * * The authorities cited do not sustain his contention.

Apart from the authority of these cases, it is immaterial whether the original seizure by the Coast Guard was legal or illegal. The seizure was adopted by the United States. * * *

Perhaps it should be added that it is immaterial whether the court below was right or wrong in its apparent holding that the liquor landed from the *Conejo* was of foreign origin and that therefore there was a violation of the revenue laws—for it is enough to ground forfeiture to find, as already indicated, that this licensed pleasure yacht was transporting merchandise for pay.

Finally, the appellant contends that the court below erred in the decree of forfeiture in ordering the *Conejo* delivered to the collector of customs at Portland. We are unable to see what interest the appellant has in the destination of a vessel forfeited to the United States. The contention is without merit.

In each case the decree of the district court is affirmed.

BRITISH SCHOONER VINCES *v.* UNITED STATES (27 F. (2D) 296)

United States Circuit Court of Appeals, Fourth Circuit. No. 2669, June 12, 1928. Opinion of the court:

PARKER, *Circuit Judge:* This is an appeal from a decree in admiralty assessing penalties of $500 and $73,089 against the British schooner *Vinces* and ordering the forfeiture of her cargo under sections 584 and 594 of the tariff act of 1922 (19 U. S. C. 486 and 498). The libel of information upon which the decree was entered alleged that the vessel was bound for the United States with a cargo of intoxicating liquors, claimed by the master, of the value of $73,089, that the master did not have on board a manifest describing the cargo as required by law, and that he failed to produce a manifest when demanded by the officers of the Coast Guard. The master filed answer, alleging that he filed it for and on behalf of the Smart Shipping Co. (Ltd.), of Halifax, Nova Scotia. He averred that both vessel and cargo were owned by that company and that the vessel was bound on a voyage from St. Pierre-Miquelon to Nassau in the Bahamas. He denied that she was bound for the United States or that she ever at any time came either within 12 miles or within one hour's sailing distance of the coast of this country.

The facts in the case may be briefly stated. About 4 o'clock on the afternoon of March 14, 1927, as the Coast Guard cutter *Mascoutin* was returning from Savannah to Charleston she sighted the *Vinces* as that vessel crossed her wake steaming in the direction of the South Carolina coast. The *Mascoutin* put about and signaled to the *Vinces* to stop, but instead of obeying the signal the latter vessel turned and stood out to sea at full speed. At this time she was about 7½ miles and within one hour's sailing distance of the shore. The *Mascoutin* gave chase and overtook her when she was distant from the shore about 12¾ miles. She at first refused to heed the signals of the *Mascoutin*, but after the latter vessel had fired a number of times and had finally dropped a solid shot across her bow she hove to and allowed officers from the *Mascoutin* to come aboard.

The officers who boarded the *Vinces* demanded of her master that he produce the ship's papers. He produced a number of papers, including shipping articles, certificate of British registry, license to operate radio-receiving equipment, and Canadian customs clearance papers, but no manifest covering the cargo. When specific demand was made upon him to produce a manifest he failed to do so, but offered the customs clearance papers as such. The Coast Guard officers thereupon searched the vessel and found that she had on board 1,485 cases of champagne and whiskey, 1,451 of which were full and the others only partly full, and 99 kegs of malt. They thereupon seized the vessel and took her into the port of Charleston, where the libel of information was filed for violation by her master of the tariff act of 1922 in failing to have and produce a manifest as required by the provisions of that act. Upon appraisal the cargo was valued at $73,089 and the vessel herself at $12,000.

The district judge found that the *Vinces* was bound for the United States with her cargo of liquor and was within 12 miles and within an hour's sailing distance of the shore when she was hailed by the *Mascoutin*, and we think that these findings are amply supported by the evidence. It appears that she sailed from Halifax, Nova Scotia, on February 15, 1927, ostensibly bound for Nassau, but that she never reached Nassau, although the distance was only about 1 500 miles and the voyage should have been made in seven or eight days. That Nassau was only a pretended destination appears from the fact that shortly after leaving Halifax and while at sea she transferred her cargo of liquor to another vessel, whose name and the name of whose master the master of the *Vinces* claimed that he was unable to remember. On March 9, nearly a month after her departure from Halifax, she was seen by the revenue cutter *Shaw* a little north of the latitude of Cape Hatteras and approximately 120 miles westward of the course from Halifax to Nassau engaged in taking on a cargo of liquor from the British schooner *Dorothy M. Smart*. Even then she did not proceed to Nassau, which port she could have reached in less than five days; but, on the contrary, five days later, on the morning of March 14, she was seen hovering near the South Carolina coast, and that afternoon, when first seen by the *Mascoutin*, she was steaming directly for the shore.

The master of the *Vinces* strenuously denied that he was bound for the United States, that he was within an hour's sailing distance of the shore, or that he was within the 12-mile limit. The trial judge, however, listened to much testimony on these questions, and, as he saw and heard the witnesses, we would not be justified in disturbing his findings unless satisfied that he misapprehended the evidence or went against its clear weight. * * * We are not so satisfied, but, on the contrary, are convinced from a careful study of the evidence that his findings were correct. This leaves for consideration only the questions of law raised by the appeal. These relate (1) to the validity of the seizure; (2) to the right to assess penalties against the vessel; and (3) to the right to decree the forfeiture of the cargo. We shall consider these in order.

(1) *The validity of the seizure.*—On this question, the contention in behalf of the vessel is (1) that as she was admittedly beyond the 3-mile limit at all times she had not committed a crime within the territorial limits of the United States and was therefore not subject to seizure; and, (2) that under the treaty with Great Britain of May 22, 1924 (43 Stat. 1761), seizure is authorized only when it appears that the vessel is within one hour's sailing distance of shore and has committed or is attempting to commit an offense against the laws of the United States which prohibit the importation of alcoholic beverages. No point is made that the vessel was actually overhauled and the seizure actually made beyond the hour's sailing distance of shore and beyond the 12-mile limit if she was within these limits when signaled; and we think it is clear under the "hot pursuit" doctrine that if the right of seizure existed at the time the vessel was signaled, the right was not lost because she had succeeded in getting farther from shore in her attempt to run away. * * *

While it is true, as contended, that the vessel never came within the 3-mile limit of the territorial waters of the United States, we think that as she was bound for the United States with an unmanifested cargo and came within 12 miles or 4 marine leagues of the coast, her seizure was justified under the revenue statutes of the United States, and that these statutes constitute a valid exercise of the sovereign power of the Government. Section 431 of the tariff act of 1922 provides that the master of every vessel arriving in the United States shall have on board a manifest, in a form prescribed by the Secretary of the Treasury, setting forth among other things a description of the merchandise on board and the names of the persons to whom it is consigned. (U. S. C. A. title 19, sec. 241.) Section 581 authorized officers of the Coast Guard to board any vessel within 4 leagues of the coast of the United States to examine the manifest and to inspect, search, and examine the vessel, etc., and, if it appears that any breech or violation of the laws of the United States has been

committed whereby the vessel or its cargo is liable to forfeiture, to seize same. (U. S. C. A. title 19, sec. 481.) Section 583 requires that the master of every vessel "bound to a port or place" in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him the original and one copy of the manifest. (U. S. C. A. title 19, sec. 485.) And it is clear that the duty of production under this section is co-extensive with the authority to inspect under section 581 and extends 4 leagues from the coast. * * * Section 584 provides a penalty of $500 for failure to produce the manifest to the officer demanding same and if any goods are not included or described in the manifest, a penalty equal to the value of such goods, with other provisions as to forfeiture of cargo which are hereafter considered. (U. S. C. A. title 19, sec. 486.) And finally section 594 provides that whenever a vessel or its owner or master has become subject to a penalty for violation of the customs revenue laws of the United States, it "shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same." (U. S. C. A. title 19, sec. 498.) In view of these provisions, there can be no doubt that the seizure of the vessel was authorized by the statutes upon which the Government relies. * * *

And we do not think that the right within the 12-mile limit to seize and proceed against vessels bound for the United States for violation of the provisions of its revenue laws has been limited in any way by the provisions of the treaty with Great Britain of 1924 (43 Stat. 1761). The purpose of that treaty, so far as the question here is concerned, was to secure the right to search and arrest ships from which intoxicating liquors are sold just beyond the limits of territorial jurisdiction, not to interfere with the preexisting right to board and arrest ships bound for the United States which have failed to comply with the provisions of its tariff laws. * * *

In this case, moreover, it appears that when signaled by the *Mascoutin* the *Vinces* was as a matter of fact within an hour's sailing distance of the shore and was bound for the United States and there was "reasonable cause for belief" that she was "committing or attempting to commit an offense against the laws of the United States * * * prohibiting the importation of alcoholic beverages." The seizure was therefore expressly authorized by the treaty. It is true that the treaty provides that the vessel may be seized and taken into a port of the United States for adjudication in accordance with "such" laws (i. e., laws prohibiting the importation of alcoholic beverages), and that the decree in this case was rendered not under the national prohibition act, which prohibits importation, but under the tariff act. But there is nothing in the treaty which limits the right of the United States to proceed against a vessel so seized for violation of its tariff laws where such violations exist. * * *

(2) *The assessment of penalties against the vessel.*—Coming to the second question, the right to assess penalties against the offending vessel the contentions made in its behalf, as we understand them, are: (1) That, as the vessel did not come within the 3-mile limit it could be guilty of no offense against the laws of the United States for which a penalty could be assessed against it; (2) That as the master had no manifest of the cargo the only penalty assessible against him in any event was the penalty of $500 for failure to produce a manifest; and (3) that as the cargo of liquor was contraband it had no value which could serve as a basis for the assessment of a penalty. None of these contentions, we think, is meritorious. * * *

(3) *The forefeiture of the cargo.*—Coming to the question as to the validity of the forfeiture of the cargo, we understand the position of the respondent to be that the cargo was not forfeitable (1) because there had been no conviction of the master, and (2) because it was not shown that the cargo belonged or was consigned to the master or other officer or to any of the crew of the vessel.

The first position does not require any extended discussion. The statutes subject the vessel to the penalty and the unmanifested merchandise to forfeiture, and it is well settled that the Government may proceed in admiralty by libel of information against the vessel and cargo seized without proceeding against the master. * * *

We think that the contention that the cargo is not subject to forfeiture because not shown to belong to the master or other officer of the vessel or member of the crew or to have been consigned to any of them is equally untenable. In the first place, the cargo must be treated as having been consigned

to the master. He was in possession of it and was bringing it to the shores of the United States. The reasonable inference is that he was bringing it there for the purpose of disposition. He had, therefore, the control of the cargo and the power of disposition over it, and was in fact the consignee, although there was no manifest or bill of lading in which his name appeared. * * *

It is contended that the cargo is the property of the Smart Shipping Co., the alleged owner of the vessel; but who this company is does not appear except from the very unsatisfactory testimony of the master. The company has made no claim to the cargo except in the answer which the master has filed, and it is significant that the master who makes the claim in behalf of this third person was himself in possession of the cargo with no papers to show that it belonged to anyone other than himself. Under such circumstances the court would certainly not be justified in denying the forfeiture, especially in view of section 615 of the tariff act (U. S. C. A. title 19, sec. 525), which provides that where probable cause is shown for institution of proceedings for forfeiture of property under the provisions of the tariff act, and the property is claimed by any person, the burden of proof shall lie upon such claimant. There can be no doubt in this case that probable cause was shown for the institution of the forfeiture proceedings against the cargo, and the Smart Shipping Co., if there be such a company, has certainly not sustained the burden imposed by the statute. * * *

Having arrived at this conclusion, it is not necessary to consider the question which would be presented if it appeared that the cargo was the property of the owner of the vessel and had not been consigned to the master. It was contended before us that in such case the statute does not authorize the forfeiture of the cargo and that the word "owner" as used herein has reference to the owner of a vehicle as distinguished from a vessel. We can see no reason for such a distinction, and it would seem that the statute should be construed to apply to unmanifested goods belonging to the owner of a vessel as well as to such goods belonging to the owner of a vehicle. As stated above, however, it is not necessary to decide this point, as the cargo was properly forfeited as being in fact consigned to the master and also because the claimant had not sustained the burden of proof imposed by the statute. * * *

There was no error and the decree of the district court is accordingly *affirmed.*

JAMES HORACE ALDERMAN *v.* UNITED STATES

United States Circuit Court of Appeals for the Fifth Circuit. No. 5361. March 25, 1929. Before Walker and Foster, circuit judges, and Grubb, district judge.

FOSTER, *Circuit Judge:* Two indictments were returned in the southern district of Florida, the first district into which he was brought, against James Horace Alderman, appellant, one charging him with the murder of Victor A. Lamby by shooting him with a pistol, upon the high seas, on a vessel owned by the United States; and the other charging him with the murder of Sidney C. Sanderlin by the same means and at the same time and place. By agreement the indictments were consolidated and tried together. The trial resulted in a verdict of guilty as charged on each indictment, judgments were entered on the verdicts, and Alderman was condemned to death.

The evidence on behalf of the Government tended to show the following state of facts. On Sunday, August 7, 1927, at about 1.30 in the afternoon, the United States Coast Guard patrol boat *No. 249*, commanded by Sidney C. Sanderlin and with a crew of six men, consisting of Frank Tuten, Joe Robinson, Hal Caudell, Jody Hollingsworth, Victor Lamby, and Frank Lehman, was on its way from Fort Lauderdale, Fla., bound for Bimini, British West Indies, having on board as a passenger, Robert K. Webster, a United States secret service agent operative. When about 38 miles from Fort Lauderdale and about 17 miles from Bimini those on board the cutter saw a motor boat, later discovered to be the *V 13997*, headed for the Florida coast and coming from the direction of Bimini. Sanderlin decided to investigate her. Several shots were fired from the cutter in the direction of the motor boat as a signal for her to stop, which she eventually did, and in a short while the cutter reached her side. Sanderlin hailed the motor boat and asked where she was bound and

some one on her answered that she was from Miami and bound for Miami. The boats were made fast together and Sanderlin then went on board the motor boat and there found the defendant and another man named Weech. Both were unarmed. Sanderlin searched the motor boat and discovered about 20 cases of whisky. Weech told Sanderlin that he had had hard luck, that he had a wife and children in Miami and that it was his first trip; that he had gotten enough money to get a small load and asked Sanderlin if he would not take the liquor and let them go with the boat. Alderman was present and heard this statement. Sanderlin said he could not do that and then he ordered Weech and Alderman to come aboard the cutter. There was some conversation between Sanderlin and members of his crew about taking the motor boat to Miami and Sanderlin opened the pilot-house door to radio to the base. Alderman was standing on the deck of the cutter opposite the pilot house, and he reached inside the pilot house where there were four automatic pistols lying on a table, took up one, and shot Sanderlin in the back, killing him almost instantly, and then shot Lamby, who at that time was standing in or near the doorway of the companionway on the cutter leading into the engine room. Lamby fell into the engine room and was paralyzed as a result of his wound. He died some four days later. Hollingsworth and Webster were on the forward part of the cutter, Hollingsworth receiving the liquor which was being passed over by the other members of the crew, all of whom except those just mentioned were on the motor boat. Alderman transferred the liquor back to his boat, lined up the six survivors of the patrol boat on the stern of his own motor boat with their hands up, got another pistol out of the pilot house, fired a shot from it into the deck of the cutter and said, "Well, it works. I have enough ammunition to finish all of you. I will use your own ammunition on you." He then told Weech to go down and break the gas lines on the cutter and let the gas into the bilge and set it afire. Weech went to do so and then came up and said that there was a man down there in the engine room. Alderman replied, "Shoot him." Weech came back and said "I can not shoot him." Alderman said, "He has got to die. Burn him up in there," and added, "You are all going to hell now." Weech told Alderman he did not have any matches and Alderman told him to look in the engine room of the motor boat for some. Weech then got a box of matches and then Frank Tuten told Alderman he had better start his motor up; that if Weech threw a match into the engine room of the cutter it would go up in the air and none of them would get away from there. Alderman then gave Weech a gun, got another out of the pilot house, and went into the engine room of the motor boat and started the motor and then went back on deck. Weech then started for the cutter with the matches and the motor started spitting and was about to stop. Alderman called Weech back to speed up the motor. Weech went down to speed it up. He did not do it quickly enough to suit Alderman and Alderman glanced down into the engine room and then the six survivors, taking advantage of his momentary relaxing of vigilance, rushed him and succeeded in overpowering him, not however, until he had shot and killed Webster and had seriously wounded Hollingsworth, the bullet destroying one of Hollingsworth's eyes and the impact knocking him overboard. In addition to that there was testimony as to opprobrious epithets applied to the men by Alderman and an account of Hollingsworth's swimming in the sea, pursued by sharks, and later being forced to lie with his head down so as to let the blood run out of his mouth. There was also evidence tending to show that the cutter was typical in appearance of Coast Guard boats and flying the Coast Guard emblems. The motor boat was about 30 feet long and showed no flag when hailed.

Alderman did not deny the shooting of the four men but entered a plea of self-defense. His testimony in substance was that he did not know the cutter was a revenue boat; that no one on her was in uniform and he thought that the men on board were hijackers; that he asked Sanderlin what his authority was to board and search his boat and Sanderlin declined to disclose it; that Sanderlin said nothing about radioing the base; that he did not notice the radio cabinet and did not see Sanderlin attempt to use it; that when Sanderlin was in the center of the pilot house and he (Alderman) was standing just outside, Sanderlin said, "Now damn you, I have got you. I am going to fix you just the same as the rest of the rum runners, Charlie Waite, Red Shannon, and that damn nigger. Red Shannon was killed with his hands in the air with a ball in the back of his head." That Lamby came in about that time and said, "Yes, damn you, we are going to kill you." Sanderlin and Lamby were

not talking loud and it looked to him as though they had plotted together. Lamby made a dive for a gun, and he (Alderman) grabbed at the same time, got the gun and shot him in the breast. Sanderlin whirled to grab a gun and Alderman shot him in the back; that he intended to throw the whisky overboard and take the other men and the boats into Miami and turn them over to the police.

The defendant complains of the admission of all of the testimony as to what occurred immediately after the shooting of Sanderlin and Lamby on the ground that the crimes for which he was on trial had been completed and the subsequent events did not form part of the res gestae; that the evidence as to other crimes committeed subequent to those for which he was on trial was therefore irrevelant and inadmissible and that the evidence as a whole could have no other effect than to improperly inflame the minds of the jury and prejudice it against him. These points were raised by objection to the evidence; by a motion to exclude it after it had been admitted, by a motion for a mistrial, and by requests for instructions, all of which were overruled. Error is assigned thereto.

Necessarily, what is part of the res gestae depends on the facts peculiar to each case. It would be useless to review the authorities cited and relied upon by defendant as the questions presented may be decided on elementary principles.

There are no limits of time within which the res gestae can be arbitrarily confined, provided there is but one transaction, and it is not a ground for excluding evidence of circumstances forming part of the res gestae that the same evidence tends to establish the commission of other crimes by the defendant. * * *

The defendant asked a number of special instructions. It is unnecessary to set them out in full, but in substance the court was requested to charge that if the persons on board the patrol boat had no reasonable grounds to believe that Alderman and Weech were engaged in any unlawful act, were committing no crimes against the revenue laws of the United States, and were upon the high seas more than 12 miles from any American shore, that the firing upon the boat which caused her to lay to and the subsequent search were unlawful; that if Alderman took the life of the deceased to prevent an unlawful search and seizure of his boat and of his person, then such act would be justified and he should be acquitted. These requests were based upon the theory that the boat was Alderman's home and a search warrant was necessary to enter it; that the Coast Guards have no authority on the high seas beyond the customs limit of 12 miles and that he was well within his legal rights in possessing and transporting liquor on the high seas.

The special charges requested were refused and the court charged the jury in substance that the Coast Guards had the right to stop, search, and seize the motor boat because she had departed from Miami for Bimini without clearance. The charge of the court as given was not objected to, but we are asked to notice plain error arising on the record in connection therewith and error is assigned to the refusal of the special requests.

It is elementary that though a requested instruction states the law correctly it must be refused if there are no facts in the case to justify it. Regardless of whether the search of the motor boat was legal, there is no doubt from the evidence that Alderman had not objected and did not seek to resist it by force. His defense is that he committed the homicides in defense of his own life after Sanderlin and Lamby had told him of their intention to murder him. His subsequent acts had no relation to the seizure and search of his boat. The requested instructions could have been properly refused for that reason. * * *

Passing this, for the purpose of considering appellant's contentions, it is settled that Sanderlin, as commander of the Coast Guard boat, had the authority to stop, board, and search an American vessel beyond the 12-mile limit in proper circumstances. (Maul *v.* U. S. 274 U. S. 501.) As he is dead, we do not know what particular circumstances he relied on for the action he took, but he was vested with considerable discretion and without doubt he considered them sufficient to justify his initial investigation. Having boarded the motor boat, he may be presumed to have discovered that she had departed on a foreign voyage from Miami to Bimini without proper clearance papers, as it was conclusively shown that she did not in fact clear. A seizure of the boat for violation of the navigation laws was therefore legal. * * *

* * * The record discloses no reversible error. *Affirmed.*

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