

The Mohawk

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Court : US Supreme Court

Decided On : 1865

Appeal No. : 70 U.S. 566

Appellant : The Mohawk

Judgement :

The Mohawk - 70 U.S. 566 (1865)

U.S. Supreme Court The Mohawk, 70 U.S. 3 Wall. 566 566 (1865)

The Mohawk

70 U.S. (3 Wall.) 566

ERROR TO THE CIRCUIT

COURT OF MICHIGAN

SYLLABUS

1. The Act of December 23, 1852, authorizing foreign vessels wrecked and repaired in the United States to be registered or enrolled, is to be taken as a part of our system of registration and enrollment.

2. Vessels engaged in the foreign trade are registered, and those engaged in the coasting and home trade are enrolled, and the words "register" and "enrollment" are used to distinguish the certificates granted to those two classes of vessels.

3. The two statutes providing generally for registry and enrollment of vessels are the Act of December 31, 1792, applicable exclusively to registry of vessels engaged in foreign commerce, and the Act of July 18, 1793, applicable exclusively to vessels engaged in domestic commerce.

4. The penalty of forfeiture of a vessel for the use of a certificate of registry to which she is not entitled, found in the 27th section of the act of 1792, is not imported into the act of 1793, and there is no forfeiture under that act for the use of a fraudulent enrollment.

5. But the Act of March 2, 1831, concerning vessels used on our northern frontiers, which are necessarily engaged in both the foreign and home traffic at the same time, makes the certificate of enrollment equivalent to both registry and enrollment.

6. This act does, by the proviso to its 3d section, apply the penalty of forfeiture contained in the 27th section of the act of 1792 to an enrollment having the effect of a register fraudulently obtained.

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An act of Congress of 1792 [[Footnote 1](#)] (section 27), provides that

"If any certificate of registry *or record* shall be fraudulently or knowingly used for any ship or vessel not then actually entitled to the benefit thereof according to the true intent of this act, such ship or vessel shall be forfeited to the United States."

An act of 1793, [[Footnote 2](#)] concerning the enrollment of vessels engaged in domestic commerce, enacts (section 2) that

"In order for the enrollment of any vessel, she shall possess the same qualifications, and the same requisites, in all respects, shall be complied with as

are necessary for registering ships by the registry law, and the same duties are imposed on all officers with the same authority in relation to enrollments, and the same proceedings shall be had touching enrollments."

An Act of December 23, 1852, [[Footnote 3](#)] authorizes the Secretary of the Treasury to issue a register or enrollment for any vessel built in a foreign country whenever such vessel may have been or shall hereafter be wrecked in the United States and shall have been or may hereafter be purchased and repaired by a citizen or citizens thereof, *provided* that it shall be proved to the satisfaction of the Secretary of the Treasury that the repairs put upon such vessel shall be equal to three-fourths of the cost of said vessel when so repaired.

Intermediate in date between the act last mentioned and the one of 1793, just before it set forth, there is another act. This Act, dated March 2, 1831, [[Footnote 4](#)] provides by its third section that any vessel of the United States navigating the waters of our northern, northeastern, and northwestern frontiers otherwise than by sea shall be enrolled and licensed in such form as may be prescribed by the Secretary of the Treasury,

"which enrollment and license shall authorize any such vessel to be employed either in the coasting or foreign trade, and no certificate of registry shall be required for any vessel

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so employed on said frontiers, *provided that such vessel shall be in every other respect liable to the rules, regulations, and penalties now in force relating to registered vessels on our northern, northeastern, and northwestern frontiers.* "

With these four different statutes in force, Sloan and others, wishing to give to a Canadian-built and owned vessel the advantages of one with American papers, scuttled her and pretended that she had been accidentally made a wreck. They then raised her and put her in order, and falsely swearing, for the purpose of changing her to an American vessel, that the repairs were "equal to three-fourths of her cost when so repaired," procured American papers for her from the

Secretary of the Treasury under the Act of December 23, 1852.

The United States now libeled her in the District Court of Michigan, with the idea:

1. That under the three acts first above mentioned, to-wit, the acts of 1792, 1793, and 1852 alone, she was liable to forfeiture.
2. That if this was not so, she was certainly liable under these acts in connection with the act of March 2, 1831.

The district court thought that the acts were not so essentially parts of one system as that the earlier ones could be imported into the latter, and dismissed the libel, and of this view was the circuit court. On appeal by the United States, the matter was now here for review.

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MR. JUSTICE MILLER delivered the opinion of the Court.

The Act of December 23, 1852, authorized the Secretary of the Treasury to issue a register or enrollment for any vessel built in a foreign country whenever such vessel may have been or shall hereafter be wrecked in the United States and shall have been or may hereafter be purchased and repaired by a citizen or citizens thereof, *provided* that it shall be proved to the satisfaction of the Secretary of the Treasury that the repairs put upon such vessel shall be equal to three-fourths of the cost of said vessel when so repaired.

In this act, under which the owners of the *Mohawk* procured the enrollment, and the whole of which we have just quoted, there is nothing which inflicts such forfeiture or any other penalty for fraud or false swearing, in procuring the action of the Secretary.

This act is, however, to be construed as a part of our system of registry and enrollment of vessels, and as merely adding another class which may be registered and enrolled to those enumerated in the previous statutes. Whatever,

therefore, may be found in those statutes imposing a penalty for fraud in procuring the *enrollment* of a vessel may well be held to apply to an enrollment under the act of 1852.

We emphasize the word *enrollment* because the registry

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of a vessel and the enrollment of a vessel are essentially different things, are provided for by different statutes, and are applicable to vessels engaged in different and distinct pursuits. Hence, the act of 1852 says that the secretary may issue to a vessel, such as it describes, "a register or enrollment."

The purpose of a register is to declare the nationality of a vessel engaged in trade with foreign nations and to enable her to assert that nationality wherever found. The purpose of an enrollment is to evidence the national character of a vessel engaged in the coasting trade or home traffic and to enable such vessel to procure a coasting license. [[Footnote 5](#)]

The distinction between these two classes of vessels is kept up throughout the legislation on Congress on the subject, and the word "register" is invariably used in reference to the one class, and "enrollment" in reference to the other.

There are two statutes in force making general provisions for the subjects of registry and enrollment of vessels. One of them is the Act of December 31, 1792, which applies exclusively to vessels engaged in foreign commerce and to their registry, and the other is the Act of February 18, 1793, which relates to vessels engaged in the coasting trade and fisheries, and to their enrollment.

The act of 1792 provides that

"If any certificate of registry or record shall be fraudulently or knowingly used for any ship or vessel not then actually entitled to the benefit thereof according to the true intent of this act, such ship or vessel shall be forfeited to the United States."

This section does not refer to an enrollment, because neither the word "registry" or "record" is usually applied to an enrollment, and because the true intent of the act can have reference to no other class of vessels than those engaged in foreign commerce, which are required to take out a register.

The act of 1793, concerning the enrollment of vessels engaged in domestic commerce enacts, by the second section, that

"In order for the enrollment of any vessel, she shall

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possess the same qualifications and the same requisites in all respects shall be complied with as are necessary for registering ships by the registry law, and the same duties are imposed on all officers with the same authority in relation to enrollments, and the same proceedings shall be had touching enrollments."

From this it is argued that forfeiture shall take place under like circumstances as is provided for in the registry law. But there is not only nothing in the terms used which refers to "penalties," but there is nothing which can be held to have such reference by any fair implication. These provisions concern the class or qualifications of vessels which may be enrolled, the requisites to be complied with before enrollment, the duties and authority of officers connected with the enrollment, and the proceedings to be had in obtaining enrollment. In all these particulars, the rules of the registry law are adopted. The act makes sufficient provision for false affidavits and has its penalties for them, but forfeiture of the vessel is not one of them.

But the Act of March 2, 1831, undertakes, as its title imports, to regulate both the foreign and coasting trade on the *northern, northeastern, and northwestern* frontiers of the United States.

In these regions, the domestic and the foreign trade are so blended that the same vessel is almost necessarily engaged in both at the same time, and often during the same voyage. To meet this kind of trade, the third section of that act says, in

reference to vessels engaged in navigating those waters, that

"they shall be enrolled and licensed in such form as may be prescribed by the Secretary of the Treasury, which enrollment and license shall authorize any such boat, sloop, or other vessel, to be employed either in the coasting or foreign trade, and no certificate of registry shall be required for vessels employed on said frontiers, *provided* that such boat, sloop or other vessel, shall be in every other respect liable to the rules, regulations, and penalties now in force relating to registered vessels on our northern, northeastern, and northwestern frontiers. "

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It is the obvious policy of this act to enable a class of vessels which are engaged in both the foreign and the coasting trade at the same time to do so without the necessity of taking out both a register and an enrollment. For this purpose, the act makes the enrollment equivalent to both register and enrollment. In giving to the enrollment the effect of a register, it very properly subjects the vessel to all the rules, regulations, and penalties relating to registered vessels. One of these penalties, as we have already seen, is the forfeiture of the vessel for the fraudulent use of a certificate of registry when she is not actually entitled to the benefit thereof.

The statements of the libel and the evidence in the case which supports them bring the *Mohawk* within this penalty.

Decree reversed and the case remanded with instructions to enter a decree of forfeiture and condemnation of the vessel.

[[Footnote 1](#)]

December 31, 1792; 1 Stat. at Large 287.

[[Footnote 2](#)]

February 18, 1793; *id.*, 305.

[[Footnote 3](#)]

10 *id.* 149.

[[Footnote 4](#)]

4 *id.* 487.

[[Footnote 5](#)]

[Gibbons v. Ogden](#), 9 Wheat. 214.

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