

terial facts within their knowledge might of itself satisfy the court that a forfeiture should be decreed. But the court will require the prosecutor to introduce full proof of the allegations in the libel, whenever the circumstances shall make it reasonable. U. S. v. The Lion [Id. 15,607].

The result seems to be that the court must be governed by a wise discretion, whether to require proofs or not. In all cases, proclamation to appear should be made and a decree entered for default and contumacy; and then, or upon reading the libel and proceedings thereon, and either with or without further proof as the court may direct, such decree should be made as the nature of the case may require. In the present case, being informed that the boat is a mere skiff, to which it is doubtful whether the inspection laws were meant to apply, I have deemed it advisable to hear proofs.

On the merits, D. J. Baldwin, U. S. Atty., cited and relied on sections 4399, 4400, 4426, 4437, 4443, 4446, and 4449, Rev. St. U. S., and the instructions of the treasury department.

THE CIRCUIT JUSTICE. This is a libel against a small pleasure boat, twenty-nine feet long, seven feet wide, and without deck, but propelled by a small steam engine with cylinder of nine inches stroke and three and a half inches diameter. It is run occasionally by its owner and the owner of the engine for their amusement, on the Buffalo Bayou below Houston. In my judgment, this is not a vessel navigating the public waters of the United States, within the meaning of the steam inspection laws. Section 4426 of the Revised Statutes enumerates the various kinds of small steam craft which were intended to be embraced within the law. It declares that the hull and boilers of every ferry boat, canal boat, yacht, or other small craft of light character, propelled by steam, shall be inspected under the provisions of this title. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the board of supervising inspectors, also be required to be complied with, before a certificate of inspection shall be granted. And no such vessel shall be navigated without a licensed engineer and a licensed pilot.

Now the vessel in question is neither a ferry boat, canal boat nor yacht. Does it belong to the added category of "other small craft of light character?" These words must be interpreted upon the principle of *noscitur a sociis*. The last clause of the section shows that, to be within the law, a vessel must at least be one which will admit of the employment of a licensed engineer and a licensed pilot. It is not to be supposed that a mere pleasure skiff, of the kind now under consideration, was intended to be embraced

within the regulations of this law. The libel is dismissed.

The same decree will be entered for the same reason in the case of U. S. v. The Bonita.

Case No. 15,796.

UNITED STATES v. MONONGAHELA BRIDGE CO.

[26 Law Rep. 107; 11 Pittsb. Leg. J. 169; 2 Pittsb. Rep. 475.]

District Court, W. D. Pennsylvania. Dec., 1863.

PENAL ACTION—TOKENS TO BE USED IN LIEU OF MONEY—TOLL TICKETS.

1. Act Cong. July 17, 1862 [12 Stat. 592], construed.

2. Bridge, railroad and passenger railway companies may issue tickets "good for one trip," without violating the provisions of the act.

3. Those tickets are not designed to supplant the circulating medium, but are matters of convenience, equally to the passenger and the companies.

4. If they bore any resemblance or similitude to the coin of the United States, or the postage currency authorized by congress, or if the purpose, indicated upon their face, was to cause them to circulate as money, the corporations issuing them would be amenable to the penalties of the act.

This case, together with the cases of U. S. v. Alleghany Bridge Co. and U. S. v. Northern Liberties Bridge Co. was argued by Bakewell, Loomis & Shaler for defendants, and by Mr. Carnahan, U. S. Dist. Atty.

McCANDLESS, District Judge. The question raised by the demurrer is, whether these corporations are liable to the penalty under the provisions of the act of congress of July 17, 1862, for issuing paper tickets to be received for toll. The indictment charges that the defendants "did issue, circulate, and pay divers checks, memoranda, and obligations, each for a sum less than one dollar, intended to be received and used in lieu of the lawful money of the United States." The tickets are described as having printed on their face, "Monongahela Bridge—good for one trip," with the name of the collector of tolls added. We do not think that this is a violation of the act of congress. Unlike the tokens recently issued by the merchants of this city, and for which penalties have been imposed by this court, these tickets have no resemblance or similitude in shape, design or material, to the coin of the United States, nor to the postage currency, the free and untrammelled circulation of which it was the design of the act to advance and protect. They cannot even be dignified by the name, given in anything but polite phraseology, to the worthless issues of rotten boroughs, which in our past history flooded the country, and against a renewal of which the prohibitions of this act are directed. They do not contain a promise to pay money, they are not the representatives of money, and therefore cannot be said to circulate, or be intended to circulate

as money. Money is the medium of exchange among the people. Its peculiar characteristic is, that it is the one thing acceptable to all men, and in exchange for which they will give any commodity they possess. The power to make it is an exclusive attribute of sovereignty, no difference of what material it may be composed. It may be of the precious or the baser metals, or it may be of paper, provided it has the stamp of the sovereign authority. Any infringement of this supreme prerogative is visited with merited punishment by all nations that claim to have organized or well-regulated governments.

What are these tickets, but a mere permit to pass on the defendant's bridge, the printed evidence that the holder has the right of way over a public thoroughfare for a given distance? Their exclusion would (prohibition would) be subject to the penalties of this law all railroad and passenger railway companies which issued tickets, as well for the convenience of the public as for their own protection. No passenger is bound to receive them, nor should they be tendered, except during periods when there is great scarcity of the smaller coin of the United States, and when the exchange is a mutual accommodation to the passenger and the collector; as every passenger is bound to pay his toll, and in the lawful circulating medium the embarrassment is more frequently with him than with the company. But as the latter enjoy a monopoly of the particular highway, it is their duty so to use their franchise as not to put the public to unnecessary inconvenience. The grant of corporate privileges is for the public good; and from our knowledge of the gentlemen having the management of these companies, we are satisfied they entertain no desire to abuse them. They have an interest in common with the community in preserving the purity of the currency, and a departure from this policy would only react on themselves.

Let judgment be entered for the defendants on the demurrer, the costs to be paid by the United States.

Case No. 15,797.

UNITED STATES v. THE MONTE
CHRISTO.

[The case reported under above title in 17 Int. Rev. Rec. 31, is the same as Case No. 9, 720.]

Case No. 15,798.

UNITED STATES v. MONTELL.

[Taney, 47.]¹

Circuit Court, D. Maryland. April Term,
1841.

PENALTIES—WHAT ARE—SUM SECURED BY BOND
—DISTRIBUTION.

The act of congress of December 31, 1792, c. 45, § 7 [1 Story's Laws, 271; 1 Stat. 290, c. 1], provides in effect that previous to any registry

¹ [Reported by James Mason Campbell, Esq., and here reprinted by permission.]

of a ship or vessel, the ship's husband, or acting and managing owner, together with the master thereof, and one or more sureties, shall become bound to the United States in a certain sum (according to the size of the vessel) that such registry shall be solely used for the vessel for which it is granted, and shall not be sold, lent or otherwise disposed of, to any person or persons whatsoever; and if the vessel be lost, or shall, by other disaster, be prevented from returning to the port, and the registry be preserved; or if the vessel be sold, in whole or in part, to a foreigner, that the register in such cases shall be delivered up to the collector, within certain times specified in the act. The 29th section of the same law declares that all the penalties and forfeitures incurred for offences against that act may be sued for and recovered in such courts, and be disposed of in such manner, as penalties and forfeitures which may be incurred for offences against the act of August 4, 1790, c. 62 [1 Story's Laws, 117; 1 Stat. 145, c. 35], and by this last-mentioned act, one moiety of all penalties, fines and forfeitures (not otherwise appropriated) are to be divided in equal portions between the collector, naval officer and surveyor. Judgment was recovered in the district court, on a bond given under the above-mentioned act, and a petition was filed by the collector, claiming one moiety of the sum recovered for himself and the naval officer and surveyor, on the ground that it was a penalty or forfeiture for an offence against the act of congress. *Held*, that the sum secured by a bond given under that act, is a penalty or forfeiture inflicted by the sovereign power for a breach of its laws, and is to be distributed in the mode provided for such penalties and forfeitures by the 29th section. It is not a liquidated amount of damages due under a contract, but a fixed and certain punishment for an offence; and it is not the less a penalty and a punishment, because security is taken before the offence is committed, in order to secure the payment of the fine, if the law should be violated.

[Cited in *Allen v. U. S.*, Case No. 240. Quoted in *Clark v. Barnard*, 108 U. S. 458, 2 Sup. Ct. 891. Cited in brief in *U. S. v. Cutajar*, 59 Fed. 1001.]

[Appeal from the district court of the United States for the district of Maryland.]

[This was a suit by the United States against Francis T. Montell upon a bond given for the proper return of his vessel's register. Judgment was had upon the bond in the district court, and the sum of \$1,200 paid. The collector of customs thereupon filed his petition in the district court, praying that a moiety of the sum recovered be paid to him and to the naval officer and surveyor. The district court dismissed the petition (case unreported), and the cause is now heard on appeal.]

N. Williams, U. S. Dist. Atty.
Wm. F. Frick, for petitioner.

TANEY, Circuit Justice. This is an appeal from the decree of the district court, and the point in dispute will be better understood by stating, in the first instance, the provisions of the acts of congress upon which it depends.

The act of December 31, 1792, c. 45, § 7 [1 Story's Laws, 271; 1 Stat. 290, c. 1], entitled "An act concerning the registering and recording of ships or vessels," provides, that previous to any registry of a ship or