

Gelston Vs. Hoyt

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Appellant : Gelston

Respondent : Hoyt

Judgement :

Gelston v. Hoyt - 16 U.S. 246 (1818)

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Gelston v. Hoyt

16 U.S. (3 Wheat.) 246

ERROR TO THE COURT FOR THE TRIAL OF IMPEACHMENTS

AND CORRECTION OF ERRORS OF THE STATE OF NEW YORK

SYLLABUS

Under the Judiciary Act of 1789, ch. 20, s. 25, giving appellate jurisdiction to the Supreme Court of the United States from the final judgment or decree of the highest court of law or equity of a state in certain cases, the writ of error may be

directed to any court in which the record and judgment on which it is to act may be found, and if the record has been remitted by the highest court, &c.;, to another court of the state, it may be brought by the writ of error from that court.

The courts of the United States have an exclusive cognizance of the questions of forfeiture upon all seizures made under the laws of the United States, and it is not competent for a state court to entertain or decide such question of forfeiture. If a sentence of condemnation be definitively pronounced by the proper court of the United States, it is conclusive that a forfeiture is incurred; if a sentence of acquittal, it is equally conclusive against the forfeiture, and in either case the question cannot be again litigated in any common law forum.

Where a seizure is made for a supposed forfeiture under a law of the United States, no action of trespass lies in any common law tribunal until a final decree is pronounced upon the proceeding *in rem* to enforce such forfeiture, for it depends upon the final decree of the court proceeding *in rem* whether such seizure is to be deemed rightful or tortious, and the action, if brought before such decree is made, is brought too soon.

If a suit be brought against the seizing officer for the supposed trespass while the suit for the forfeiture is depending, the fact of such pendency may be pleaded in abatement or as a temporary bar of the action. If after a decree of condemnation, then that fact may be pleaded as a bar; if after an acquittal with a certificate of reasonable cause of seizure, then that may be pleaded as a bar. If after an acquittal without such certificate, then the officer is without any justification for the seizure, and it is definitively settled to be a tortious act. If to an action of trespass in a state court for a seizure, the seizing officer plead the fact of forfeiture in his defense without averring a *lis pendens* or a condemnation, or an acquittal with a certificate of reasonable cause of seizure, the plea is bad, for it attempts to put in issue the question of forfeiture in a state court.

At common law, any person may, at his peril, seize for a forfeiture to the government, and if the government adopt his seizure and the property is condemned, he is justified. By the Act of 18 February, 1793, ch. 8, s. 27, officers of

the revenue are authorized to make seizures of any ship or goods for any breach of the laws of the United States.

The statute of 1794, ch. 50, s. 3, prohibiting the fitting out any ship, &c., for the service of any prince or states to cruise against the subjects, &c., of any other foreign prince or state, does not apply to any new government, unless it has been acknowledged by the United States or by the government of the country to which such new state belonged. And a plea which sets up a forfeiture under that act in fitting out a ship to cruise against such new state must aver such recognition or it is bad. A plea justifying a seizure under this statute need not state the particular prince or state by name against whom the ship was intended to cruise.

A plea justifying a seizure and detention by virtue of the seventh section of the act of 1794, under the express instructions of the President, must aver that the naval or military force of the United States was employed for that purpose and that the seizer belonged to the force so employed. The seventh section of the act was not intended to apply except to cases where a seizure or detention could not be enforced by the ordinary civil power and there was a necessity, in the opinion of the President, to employ naval or military power for this purpose.

To trespass for taking and detaining and converting property, it is sufficient to plead a justification of the taking and detention, and if the plaintiff relies on the conversion, he should reply it by way of new assignment.

A plea alleging a seizure for a forfeiture as a justification should not only state the facts relied on to establish the forfeiture, but aver that thereby the property became and was actually forfeited, and was seized as forfeited.

A forfeiture attaches *in rem* at the moment the offense is committed, and the property is instantly divested.

The seventh section of the act of 1794 did not authorize the President to order private individuals to seize, but only to employ the military and naval force to enforce a seizure.

An acquittal in the district court is conclusive.

State courts cannot try the question of forfeiture.

Defect of the second plea as containing an argumentative averment.

The rival chiefs in the Island of St. Domingo are not foreign princes or states within the Act of 1794, ch. 50, prohibiting the fitting out any ship for the service of any foreign prince or state to cruise against any other foreign prince or state.

It is the exclusive right of governments to acknowledge new states arising in the revolutions of the world, and until such recognition by our government or by that to which the new state previously belonged, courts of justice are bound to consider the ancient order of things as remaining unchanged.

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This cause had been removed into that court by the present plaintiffs in error, by writ of error directed to the supreme court of the said state. In January, 1816, the Court of the State of New York for the Correction of Errors in all things affirmed the judgment which had been rendered by the supreme court of the State of New York in favor of Hoyt, the present defendant in error. And before the coming of the writ of error issued from this Court, the said Court for the Correction of Errors of the State of New York, according to the laws of the State of New York and the practice of that court, had remitted the record, which had been removed from the supreme court of the State of New York to the said supreme court, with a mandate thereon requiring the

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supreme court of the State of New York to execute the judgment which had been so rendered by it in favor of the defendant in error. And the said record having been so remitted, the Court of Errors of the State of New York, upon the coming of the said writ of error from this Court, made the following return thereto:

"State of New York, ss."

"The President of the Senate, the senators, chancellor, and judges of the supreme court, in the Court for the Trial of Impeachments and the Correction of Errors certify and return to the Supreme Court of the United States that before the coming of their writ of error, the transcript of the record in the cause in the said writ of error mentioned, together with the judgment of this court thereon, and all things touching the same, were duly remitted in pursuance of the statute instituting this court into the Supreme Court of Judicature of this state to the end that further proceedings might be thereupon had, as well for execution as otherwise, as might be agreeable to law and justice, and in which Supreme Court of Judicature the said judgment, and all other proceedings in the said suit now remain of record, and as the same are no longer before or within the cognizance of this court, this court is unable to make any other or further return to the said writ. All which is humbly submitted."

Thereupon the counsel for the plaintiffs in error made an application to the supreme court of the State of New York to stay the proceedings upon said judgment till an application could be made to this Court in respect to the said writ of error. To avoid this delay, the counsel under the advice or suggestion of the judges of the said supreme court of

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the State of New York, entered into the following agreement, *viz.*,

"It is agreed between the attorneys of the above named plaintiffs and defendant in error that the annexed is a true copy of the record and bill of exceptions, returned by the supreme court of the State of New York to the Court of Errors of the said state, and remitted by the said Court of Errors, in the affirmance of the judgment of the said supreme court to the said supreme court. And that the said copy shall be considered by the said Supreme Court of the United States as a true copy of the said record and bill of exceptions, and shall have the same effect as if annexed to the writ of error in the above cause from the said Supreme Court of the United

States, and that the clerk of the supreme court of the State of New York transmit the same, with this agreement to the clerk of the Supreme Court of the United States, and that the same be annexed by the said clerk of the Supreme Court of the United States, to the said writ of error as a true copy of the said record and bill of exceptions."

"Record and Bill of Exceptions."

"City and County of New York, ss. Be it remembered that in the term of January in the year of our Lord one thousand eight hundred and thirteen came Goold Hoyt, by Charles Graham, his attorney, into the Supreme Court of Judicature of the people of the State of New York, before the justices of the people of the State of New York, of the Supreme Court of Judicature of the same people, at the capitol, in the City of Albany, and impleaded David Gelston and Peter A. Schenck, in a certain plea of trespass, on which the said Goold Hoyt

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declared against the said David Gelston and Peter A. Schenck in the words following: "

" City and County of New York, ss. Goold Hoyt, plaintiff in this suit, complains of David Gelston and Peter A. Schenck, defendants in the suit, in custody, &c.; For that, whereas, the said defendants, on the tenth day of July, in the year of our Lord one thousand eight hundred and ten, with force and arms, at the City of New York, in the County of New York, and at the first ward of the same city, the goods and chattels of the said plaintiff, of the value of \$200,000, then and there found did take and carry away, and other injuries to the said plaintiff then and there did, to the great damage of the said plaintiff, and against the peace of the people of the State of New York. And also for that the defendants afterwards, to-wit, on the same day and year last aforesaid, at the city and county, and ward aforesaid, with force and arms, to-wit, with swords, staves, hands, and feet, other goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff, called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons

of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels salted provisions, twenty hogsheads of ship bread, of the value of \$200,000, at the place aforesaid found, did take and carry away, and other wrongs and injuries to the said plaintiff then and there did, to the great damage of the said plaintiff, and against the peace of the people of the State of New York."

" And also for that the said

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defendants afterwards, to-wit, on the same day and year, and at the place aforesaid, the goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff, called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, of the value of \$200,000, then and there being and found, seized, took, carried away, damaged, and spoiled, and converted and disposed thereof to their own use, and other wrongs to the said plaintiff then and there did, to the great damage of the said plaintiff, and against the peace of the said people of the State of New York"

" And also for that the said defendants, on the same day and year aforesaid, with force and arms, to-wit, with swords, staves, hands, and feet, to-wit, at the city, county, and ward aforesaid, seized and took a certain ship or vessel of the said plaintiff of great value, to-wit, of the value of \$200,000, and in which said ship or vessel the said plaintiff then and there intended and was about to carry and convey certain goods and merchandises, for certain freight and reward, to be therefor paid to him the said plaintiff, and then and there carried away the said ship or vessel and kept and detained the same from the said plaintiff for a long space of time, to-wit hitherto, and converted and disposed thereof to their own use, and thereby the said plaintiff was hindered and prevented from carrying and conveying the said goods and merchandises as aforesaid, and thereby

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lost and was deprived of all the profit, benefit, and advantage which might and would otherwise have arisen and accrued to him therefrom, to-wit, at the city, county and ward aforesaid, and other wrongs and injuries to the said plaintiff then and there did, against the peace of the people of the State of New York, and to the great damage of the said plaintiff."

" And also for that the said defendants, afterwards, to-wit, on the same day and year last aforesaid, at the city, county, and ward aforesaid, with force and arms, seized, and took possession of divers goods and chattels of the said plaintiff, then and there found, and being in the whole of a large value, that is to say, a ship or vessel of the said plaintiff, called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, twenty hogsheads of ship bread, of the value of \$200,000, and staid and continued in possession of the said goods and chattels so by them seized and taken as aforesaid, and the said goods and chattels afterwards took and carried away, from and out of the possession of the said plaintiff, whereby and by reason and in consequence of such said seizure and of other the premises aforesaid, the said plaintiff not only lost and was deprived of his said goods and chattels and of all profits, benefits, and advantages that could have arisen and accrued to him for the use, sale, employment, and disposal thereof, but was also forced and obliged to and did actually lay out and expend large sums of money and to be at further trouble and expense

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in and about endeavoring to obtain restitution of the property so by the said defendants seized as aforesaid and other wrongs and injuries to the said plaintiff then and there did against the peace of the people of the State of New York and to the damage of the said plaintiff of \$200,000, and therefore he brings suit, &c.;"

"And the said David Gelston and Peter A. Schenck thereto pleaded in the words following: "

"1st. Plea."

"And the said David Gelston and Peter A. Schenck, by Samuel B. Romaine, their attorney, come and defend the force and injury, when, &c.;, and say that they are not guilty of the said supposed trespasses, above laid to their charge or any part thereof in manner and form as the said Gould Hoyt hath above thereof complained against them, and of this they put themselves upon the country."

"2d. Plea."

"And for a further plea in this behalf as to the several trespasses mentioned in the first, second, third, fourth, and fifth counts in the declaration of the said plaintiff mentioned, to-wit, in taking and carrying away the goods and chattels of the said plaintiff mentioned in the first count in the said declaration of the said plaintiff, in taking and carrying away the goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the second count in the said declaration of the said plaintiff; in seizing, taking, carrying away, damaging, spoiling,

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converting, and disposing to their own use the goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff; called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the third count in the said declaration of the said plaintiff; in seizing, taking, carrying away, keeping and detaining, and converting and disposing to their own use a certain ship or vessel of the said plaintiff, mentioned in the fourth count in the said declaration of the said plaintiff and in seizing and taking possession of and in taking and carrying from and out of the possession of the said plaintiff the goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff called the *American Eagle*,

together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the fifth count in the said declaration of the said plaintiff, above supposed to have been committed by the said David Gelston and Peter A. Schenck, "

brk:

they, the said David Gelston and Peter A. Schenck, by leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided say that the said Gould Hoyt ought not to have or maintain his aforesaid action against them, because they say that the said ship or vessel, called the *American Eagle*, with

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her tackle, apparel, and furniture, the five hundred tons of stone ballast, one hundred hogshead of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff, are the same and not other or different, and that the seizing, taking, carrying away, keeping, detaining, damaging, spoiling, converting and disposing thereof to their own use mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff are the same and not other or different.

"And the said David Gelston and Peter A. Schenck further say that the ship or vessel mentioned in the fourth count in the said declaration of the said plaintiff is the same ship or vessel, called the *American Eagle*, mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff, and not other or different, and that the seizing, carrying away, keeping and detaining, and converting and disposing thereof, to their own use, mentioned in the fourth count in the said declaration of the said plaintiff, is the same seizing, taking, carrying away, keeping and detaining, and converting and disposing thereof, to their own use, mentioned in the second, third, and fifth counts in the said declaration of the

said plaintiff, and not other or different. And the said David Gelston and Peter A. Schenck further say that the said ship or vessel, called the *American Eagle*, with her tackle, apparel, and furniture, and the five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and

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twenty hogsheads of ship bread, mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff, are included in and are the only goods and chattels embraced by the general description of goods and chattels mentioned in the first count in the said declaration of the said plaintiff, and that the taking and carrying away thereof, mentioned in the said first count in the said declaration of the said plaintiff, is the same taking and carrying away thereof mention in the said second, third, and fifth counts in the said declaration of the said plaintiff, and not other or different, and that the several trespasses mentioned in the first, second, third, fourth, and fifth counts in the said declaration of the said plaintiff, are the same trespasses, and not other or different."

"And the said David Gelston and Peter A. Schenck further say that before the tenth day of July in the year of our Lord one thousand eight hundred and ten, to-wit, on the first day of July in the year last aforesaid, at the port of New York, in the District of New York, to-wit, at the City of New York, in the County of New York, and in the first ward of the said city, the said ship or vessel, called the *American Eagle*, with her tackle, apparel, and furniture, was attempted to be fitted out and armed, and that the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, were then and there procured for equipment of the said vessel, and were then and there on board of the said vessel as a part of her said equipment, with intent that the said ship or vessel,

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called the *American Eagle*, should be employed in the service of a foreign state, to-wit, of that part of the Island of St. Domingo which was then under the government of Petion, to commit hostilities upon the subjects of another foreign state, with which the United States of America were then at peace, to-wit, of that part of the Island of St. Domingo which was then under the government of Christophe, contrary to the form of the statute in such case made and provided."

"And the President of the said United States, to-wit, James Madison, who was then President of the said United States, by virtue of the power and authority vested in him by the Constitution and laws of the said United States, did afterwards, to-wit, on the sixth day of July in the year last aforesaid, at Washington, to-wit, at the City of New York, in the County of New York, and at the ward aforesaid, authorize, empower, instruct, and direct the said David Gelston and Peter A. Schenck to seize, take, carry away, and detain, as forfeited to the use of the said United States, the said ship or vessel called the *American Eagle*, with her tackle, apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread."

"And the said David Gelston and Peter A. Schenck further say that they did afterwards to-wit, on 10 July in the year last aforesaid, at the port of New York in the District of New York, to-wit, at the City of New York in the County of New York and at the ward aforesaid, by virtue of the said power

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and authority, and in pursuance of the said instructions and directions so given as aforesaid to them, the said David Gelston and Peter A. Schenck, by the said President of the said United States, and not otherwise, seize, take, carry away, and detain the said ship or vessel called the *American Eagle*, with her tackle, apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, as forfeited to the use of the said United States, according to the form of the statute in such case made and provided, and

the said David Gelston and Peter A. Schenck further say that the seizing, taking carrying away, and detaining of the said ship or vessel, with her tackle, apparel, and furniture and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, by the said David Gelston and Peter A. Schenck on 10 July, 1810, as aforesaid, is the same seizing, taking, carrying away and detaining of the said ship or vessel, with her tackle, apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the several counts in the said declaration of the said plaintiff, and not other or different. And this they, the said David Gelston and Peter A. Schenck, are ready to verify, wherefore they pray judgment if the said Gould Hoyt ought to

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have or maintain his aforesaid action thereof against them, &c.;"

"3d. Plea."

"3. And for a further plea in this behalf as to the several trespasses mentioned in the first, second, third, fourth, and fifth counts in the declaration of the said plaintiff mentioned, to-wit, in taking and carrying away the goods and chattels of the said plaintiff mentioned in the first count in the said declaration of the said plaintiff, in taking and carrying away the goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff, called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the second count in the said declaration of the said plaintiff, in seizing, taking, carrying away damaging, spoiling, converting, and disposing to their own use the goods and chattels of the said plaintiff, to-wit, a ship or vessel of the said plaintiff, called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and

twenty hogsheads of ship bread, mentioned in the third count in the said declaration of the said plaintiff; in seizing, taking, carrying away, keeping and detaining and converting and disposing to their own use a certain ship or vessel of the said plaintiff mentioned in the fourth count in the said declaration of the said plaintiff and in seizing and taking possession of and in taking and carrying from and out of the possession of the said

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plaintiff, to-wit, a ship or vessel of the said plaintiff, called the *American Eagle*, together with her tackle, apparel, and furniture, five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the fifth count in the said declaration of the said plaintiff, above supposed to have been committed by the said David Gelston and Peter A. Schenk, they, the said David Gelston and Peter A. Schenk, by leave of the court here for the purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said Goold Hoyt ought not to have or maintain his aforesaid action against them because they say that the said ship or vessel, called the *American Eagle*, with her tackle, apparel, and furniture, the five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff are the same and not other or different, and that the seizing, taking, carrying away, keeping, detaining, damaging, spoiling, converting, and disposing thereof to their own use, mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff are the same, and not other or different."

"And the said David Gelston and Peter A. Schenck further say that the ship or vessel mentioned in the fourth count in the said declaration of the said plaintiff is the same ship or vessel, called the *American Eagle*, mentioned in the second, third, and fifth counts

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in the said declaration of the said plaintiff, and not other or different, and that the seizing, carrying away, keeping and detaining and converting and disposing thereof to their own use mentioned in the fourth count in the said declaration of the said plaintiff is the same seizing, taking, carrying away, keeping and detaining and converting and disposing thereof to their own use mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff, and not other or different."

"And the said David Gelston and Peter A. Schenck further say that the said ship or vessel called the *American Eagle*, with her tackle, apparel, and furniture, and the five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread mentioned in the second, third, and fifth counts in the said declaration of the said plaintiff are included in and are the only goods and chattels embraced by the general description of goods and chattels mentioned in the first count in the said declaration of the said plaintiff, and that the taking and carrying away thereof mentioned in the said first count in the said declaration of the said plaintiff is the same taking and carrying away thereof mentioned in the said second, third, and fifth counts in the said declaration of the said plaintiff, and not other or different, and that the several trespasses mentioned in the first, second, third, fourth, and fifth counts in the said declaration of the said plaintiff are the same trespass, and not other or different."

"And the said David Gelston and Peter A. Schenck further say

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that before 10 July, 1810, to-wit, on 1 July in the year last aforesaid, at the port of New York in the District of New York, to-wit, at the City of New York, in the County of New York, and at the first ward of the said city, the said ship or vessel, called the *American Eagle*, with her tackle, apparel, and furniture, was attempted to be fitted out and armed, and that the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, were then and there procured for the

equipment of the said vessel and were then and there on board of the said vessel as a part of her said equipment, with intent that the said ship or vessel, called the *American Eagle*, should be employed in the service of some foreign state to commit hostilities upon the subjects of another foreign state with which the United States was then at peace, contrary to the form of the statute in such case made and provided."

"And the President of the said United States, to-wit, James Madison, who was then President of the said United States, by virtue of the power and authority vested in him by the Constitution and laws of the said United States, did afterwards, to-wit, on 6 July in the year last aforesaid, at Washington, to-wit, at the City of New York, in the County of New York, and at the ward aforesaid, authorize, empower, instruct, and direct the said David Gelston and Peter A. Schenck to take possession of, and detain the said ship or vessel called the *American Eagle*, with her tackle, apparel

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and furniture and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions and twenty hogsheads of ship bread, in order to the execution of the prohibitions and penalties of the act in such case made and provided."

"And the said David Gelston, and Peter A. Schenck further say that they did afterwards, to-wit, on 10 July in the year last aforesaid, at the port of New York, in the District of New York, to-wit, at the City of New York, in the County of New York, and at the ward aforesaid, by virtue of the said power and authority, and in pursuance of the said instructions and directions so given as aforesaid to them, the said David Gelston and Peter A. Schenck, by the said President of the said United States, and not otherwise, take possession of, and detain the said ship or vessel, called the *American Eagle*, with her tackle, apparel and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, in order to the execution of the prohibitions and penalties of the act in such

case made and provided."

"And the said David Gelston and Peter A. Schenck further say that the taking possession of and detaining of the said ship or vessel, with her tackle, apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread by the said David Gelston and Peter A. Schenck on 10 July, 1810,

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as aforesaid, is the same seizing, taking, carrying away, and detaining of the said ship or vessel, with her tackle apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread mentioned in the several counts in the said declaration of the said plaintiff, and not other or different."

"And this they, the said David Gelston and Peter A. Schenck, are ready to verify, wherefore they pray judgment if the said Gould Hoyt ought to have or maintain his aforesaid action thereof against them, &c.;"

"And to which the said foregoing pleas, was subjoined the following notice."

" SIR: Please to take notice that the defendants, at the trial of the above cause, will insist upon and give in evidence under the general issue above pleaded that the ship or vessel called the *American Eagle*, with her tackle, apparel, and furniture, before 10 July, 1810, to-wit, on 1 July in the year last aforesaid, at the port of New York, in the District of New York, to-wit, at the City of New York, in the County of New York, and at the first ward of the said city, was attempted to be fitted out and armed, and was fitted out and armed, and that the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread were procured for the equipment of the said vessel and were then and there on board of the said vessel as

a part of her said equipment, with intent that the said ship or vessel, called the *American Eagle*, should be employed in the service of a foreign prince or state, to-wit, of that part of the Island of St. Domingo which was then under the government of Petion, to cruise and commit hostilities upon the subjects, citizens, and property of another foreign prince or state with which the United States was then at peace, to-wit, of that part of the Island of St. Domingo which was then under the government of Christophe, contrary to the form of the statute in such case made and provided."

" And the said defendants will also insist upon and give in evidence under the said plea that the said ship or vessel, with her tackle, apparel, and furniture, on the day and year last aforesaid, at the port of New York, in the District of New York, to-wit, at the City of New York, in the County of New York, and at the ward aforesaid, was attempted to be fitted out and armed, and was fitted out and armed, and that the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, were procured for the equipment of the said vessel, and were then and there on board of the said vessel, as a part of her said equipment, with intent that the said ship or vessel should be employed in the service of some foreign prince or state, to cruise and commit hostilities upon the subjects, citizens, and property of some other foreign prince or state, with which the United States was then at peace, contrary to the form of the statute in such case made and provided. "

" And the said defendants will also insist upon, and give in evidence under the said plea that he, the said David Gelston, was collector, and that he, the said Peter A. Schenck, was surveyor of the customs for the District of the City of New York, on 10 July, 1810, and before that time, and that they have ever since continued to be collector and surveyor as aforesaid, and that they, the said David Gelston and Peter A. Schenck as collector and surveyor as aforesaid, and not otherwise, did, on the said 10 July in the year last aforesaid at the port of New York, in the District

of New York, to-wit, at the City of New York, in the County of New York, and at the first ward of the said city, seize, take, and detain the ship or vessel, with her tackle, apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, according to the form of the statute in such case made and provided, and by virtue of the power and authority vested in them by the Constitution and laws of the United States. Dated this 11 March, 1813."

"And the said Goold Hoyt, to the said first plea, joined issue, and to the second and third pleas the said Goold Hoyt demurred as follows: "

" And as to the plea of the said David Gelston and Peter A. Schenck, by them first above pleaded, and whereof they have put themselves upon the country, the said Goold Hoyt doth the like, &c.;"

" And as to the pleas by the said David Gelston and

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Peter A. Schenck, by them secondly and thirdly above pleaded in bar, the said Goold Hoyt saith, that the second and third pleas of the said David Gelston and Peter A. Schenck, or either of them, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar and preclude him, the said Goold Hoyt, from having and maintaining his action aforesaid, against the said David Gelston and Peter A. Schenck, and that he, the said Goold Hoyt, is not bound by the law of the land to answer the same, and this he is ready to verify; wherefore, for want of a sufficient plea in this behalf, the said Goold Hoyt prays judgment, and his damages by him sustained on occasion of the committing of the said trespasses, to be adjudged to him, &c.;"

"And the said David Gelston, and Peter A. Schenck thereupon joined in demurrer as follows: "

" And the said David Gelston and Peter A. Schenck say that their said pleas, by them secondly and thirdly above pleaded, and the matters therein contained, in

manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said Goold Hoyt from having and maintaining his aforesaid action thereof against them, the said David Gelston and Peter A. Schenck, and that they, the said David Gelston and Peter A. Schenck, are ready to verify and prove the same, when, where, and in such manner as the said court shall direct, wherefore, inasmuch as the said Goold Hoyt has not answered the said second and third pleas, nor hitherto in any manner denied the same, the said David Gelston

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and Peter A. Schenck, pray judgment and that the said Goold Hoyt may be barred from having or maintaining his aforesaid action thereof against them, the said David Gelston and Peter A. Schenck, &c.;"

"And afterwards the said demurrer was brought on to be argued before the said supreme court at the City Hall of the City of New York, and judgment was given against the said David Gelston and Peter A. Schenck upon the said demurrer."

"And afterwards, to-wit, at the sittings of *nisi prius*, held at the City Hall of the City of New York aforesaid, in and for the said city and county, on 15 November, 1815, before the Honorable Ambrose Spencer, Esq. one of the Justices of the Supreme Court of Judicature of the people of the State of New York, assigned to hold pleas in the said sittings, according to the form of the statute in such case made and provided, the aforesaid issue, so joined between the said parties as aforesaid, come on to be tried by a jury of the City and County of New York aforesaid for that purpose empanelled, that is to say, Walter Sawyer Edward Wade, William Prior, James McCready, Richard Loines, John Rodgers, Asher Marx, Benjamin Gomez, Samuel Milbanks, James E. Jennings, George Riker, and Jacob Latting, good and lawful men of the City and County of New York aforesaid, at which day came there as well the said Goold Hoyt as the said David Gelston and Peter A. Schenck, by their respective attorneys aforesaid, and the jurors of the jury, empanelled to

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try the said issue, being called, also came, and were then and there, in due manner, chosen and sworn to try the same issue, and upon the trial of that issue, the counsel learned in the law for the said Goold Hoyt, to maintain and prove the said issue on their part, gave in evidence, that at the time of the seizure of the said ship *American Eagle* by the said David Gelston and Peter A. Schenck, she was in the actual, full, and peaceable possession of the said Goold Hoyt, and that, on the acquittal of the said vessel in the District Court of the United States for the District of New York, it was decreed that the said vessel should be restored to the said Goold Hoyt, the claimant of the said vessel, in the said district "

brk:

court, and for that purpose the counsel of the said Goold Hoyt gave in evidence the proceedings in the said district court of the United States, by which it appeared that a libel had been filed in the name of the United States against the said ship *American Eagle* in which it was, among other things, alleged that the said ship had been fitted out and armed, and attempted to be fitted out and armed, and equipped and furnished with intent to be employed in the service of Petion against Christophe and in the service of that part of the Island of St. Domingo which was then under the government of Petion against that part of the said Island of St. Domingo which was then under the government of Christophe, contrary to the statute in such case made and provided, and that the said Goold Hoyt had filed an answer to the said libel, and a claim to the said vessel, in which the said Goold Hoyt had expressly denied the truth of

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the allegations in the said libel, and it also appeared by the said proceedings, that in the month of April, 1811, an application had been made to the said district court by the said Goold Hoyt to have the said ship appraised and to have her delivered up to him on giving security for her appraised value, and it also appeared by the said proceedings that appraisers had been appointed by the said court and that they had appraised the said ship, her tackle, &c.;, at \$35,000, and that the said appraisement had been filed, and had not been excepted to, and that the sureties

offered by the said Gould Hoyt for the appraised value of the said ship had been accepted by the said court, and it also appeared, by the said proceedings that the said cause had been tried before the said district court and that the said libel had been dismissed, and that the said ship had been decreed to be restored to the said claimant and that a certificate of reasonable cause for the seizure of the said vessel had been denied. And the counsel of the said Gould Hoyt, to maintain and prove the said issue, did give in evidence that the value of the said ship, her tackle, apparel, and furniture, at the time of her seizure as aforesaid was \$100,000, and did also give in evidence that the said Peter A. Schenck seized and took possession of the said ship by the written directions of the said David Gelston, but no other proof was offered by the said plaintiff, at that time of any right or title in the said plaintiff to the said vessel, and here the said plaintiff rested his cause.

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"Whereupon the counsel for the defendants did, then and there, insist, before the said justice on the behalf of the said defendants that the said several matters so produced and given in evidence on the part of the plaintiff as aforesaid were insufficient, and ought not to be admitted or allowed as sufficient evidence to entitle the said plaintiff to a verdict, and the said counsel for the defendants did, then and there pray the said justice to pronounce the said matters, so produced and given in evidence for the said plaintiff, to be insufficient to entitle the said plaintiff to a verdict in the said cause, and to nonsuit the said plaintiff; but to this the counsel learned in the law, of the said plaintiff, objected, and did then and there insist before the said justice, that the same were sufficient, and ought to be admitted and allowed to be sufficient to entitle the said plaintiff to a verdict, and the said justice did then and there declare and deliver his opinion to the jury aforesaid, that the said several matters so produced, and given in evidence on the part of the said plaintiff, were sufficient to entitle the said plaintiff to a verdict, and that he ought not to be nonsuited, whereupon the said counsel for the defendants did, then and there, on the behalf of the said defendants, except to the aforesaid opinion of the said justice, and insisted that the said several matters, so produced

and given in evidence, were not sufficient to entitle the said plaintiff to a verdict, and that he ought to be nonsuited."

"After the said motion for a nonsuit had been refused, and the opinion of the said justice had been excepted to as aforesaid, the counsel of the said

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Goold Hoyt, did, in the progress of the trial, give in evidence, on the part of the said Goold Hoyt, that he purchased the said ship of James Gillespie, who had purchased her of John R. Livingston and Isaac Clason, the owners thereof, and that in pursuance of such purchase by the plaintiff, the said James Gillespie had delivered full and complete possession of the said ship, her tackle, &c.;, to the said plaintiff, before the taking thereof by the defendants."

"And the said motion for a nonsuit having been refused and the opinion of the said justice accepted to as aforesaid, the said counsel for the said defendants did thereupon, state to the said jury the nature and circumstances of the defendant's defense, and did then and there offer to prove and give in evidence, by way of defense or in mitigation or diminution of damages, that the said ship or vessel, called the *American Eagle*, with her tackle, apparel, and furniture, before 10 July, 1810, to-wit, on 1 July, in the year last aforesaid, at the port of New York, in the Southern District of New York, to-wit, at the City of New York, in the County of New York, and at the first ward of the said city, was attempted to be fitted out and armed, and was fitted out and armed, and that the said five hundred tons of stone ballast, one hundred hogshead of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, were procured for the equipment of the said vessel, and were then and there on board of the said vessel, as a part of her said equipment, with intent that the

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said ship or vessel, called the *American Eagle*, should be employed in the service of that part of the Island of St. Domingo which was then under the government of Petion, to cruise and commit hostilities upon the subjects, citizens,

and property of that part of the Island of St. Domingo which was then under the government of Christophe, contrary to the form of the statute in such case made and provided."

"And the said counsel of the said defendants did then and there offer to prove and give in evidence by way of defense or in mitigation or diminution of damages that he, the said David Gelston, was collector, and that he, the said Peter A. Schenck, was surveyor of the customs for the District of the City of New York on 10 July, 1810, and before that time, and afterwards continued to be collector and surveyor as aforesaid, and that they, the said David Gelston and Peter A. Schenck, as collector and surveyor as aforesaid, and not otherwise, did, on the said 10 July in the year last aforesaid, at the port of New York, in the Southern District of New York, to-wit, at the City of New York, in the County of New York, and at the first ward of the said city, seize, take, and detain the said ship or vessel with her tackle, apparel, and furniture, and the said five hundred tons of stone ballast, one hundred hogsheads of water, one hundred and thirty barrels of salted provisions, and twenty hogsheads of ship bread, according to the form of the statute in such case made and provided, and by virtue of the power and authority vested in them by the Constitution and

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laws of the United States, and for such cause as is hereinbefore stated."

"And the said counsel of the said defendants did then and there insist before the said justice on the behalf of the said defendants that the said several matters, so offered to be proved and given in evidence on the part of the said defendants as aforesaid ought to be admitted and allowed to be proved and given in evidence in justification of the trespass charged against the said defendants, or in mitigation or diminution of the damages claimed by the plaintiff as aforesaid."

"And the said counsel for the said defendants, did, then and there, pray the said justice to admit and allow the said matters so offered to be proved and given in evidence, to be proved and given in evidence in justification of the trespass

charged against the said defendants, or in mitigation or diminution of the damages claimed, by the plaintiff as aforesaid; but to this the counsel learned in the law, of the said plaintiff, objected, and did then and there insist before the said justice that the same ought not to be admitted, or allowed to be proved or given in evidence, in justification of the trespass charged against the said defendants, and that the same ought not to be admitted, or allowed to be proved or given in evidence, in mitigation or diminution of the damages claimed by the plaintiff as aforesaid, inasmuch as the counsel of the said Gould Hoyt admitted that the defendants had not been influenced by any malicious motives in making the said seizure, and that they had not acted with

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any view or design of oppressing or injuring the plaintiff. And the said justice did, then and there, declare and deliver his opinion, and did then and there overrule the whole of the said evidence, so offered to be proved by the said defendants, and did declare it to be inadmissible in justification of the trespass charged against the said defendants, and after the admission so made by the counsel of the said Gould Hoyt, as aforesaid, did declare and deliver his opinion that the said evidence ought not to be received in mitigation or diminution of the said damages, as the said admission precluded the said plaintiff from claiming any damages against the defendants by way of punishment or smart money, and that after such admission the plaintiff could recover only the actual damages sustained, and with that direction left the same to the said jury, and the jury aforesaid, then and there gave their verdict for the said plaintiff for \$107,369.43 damages, whereupon the said counsel for the said defendants did then and there, on the behalf of the said defendants, except to the aforesaid opinion of the said justice, and insisted that the said several matters so offered to be proved and given in evidence ought to have been admitted and given evidence in justification of the trespass charged against the said defendants, or in mitigation or diminution of the damages claimed by the plaintiff as aforesaid."

"And inasmuch as neither the said several matters so produced and given in evidence on the part of the said plaintiff, and by the counsel of the said defendants

objected to, as insufficient evidence to entitle the said plaintiff to a verdict as aforesaid, nor the said several matters so offered to be proved and given in evidence, on the part of the said defendants, in justification of the trespass charged against the said defendants, or in mitigation or diminution of the damages claimed by the plaintiff as aforesaid, appear by the record of the verdict aforesaid, the said counsel for the said defendants did, then and there, propose their exceptions to the opinions and decisions of the said justice, and requested him to put his seal to this bill of exceptions, containing the said several matters so produced and given in evidence on the part of the said plaintiff as aforesaid, and the said several matters so offered to be proved and given in evidence, on the part of the said defendants as aforesaid, according to the form of the statute in such case made and provided. And thereupon the said justice, at the request of the said counsel for the said defendants, did put his seal to this bill of exceptions, on the said 15 November, 1815, pursuant to the statute in such case made and provided."

"If either party shall require the proceedings in the district court to be set out more at length, then it is understood, that such proceedings shall be engrafted into the bill of exceptions, and form part thereof."

"AMBROSE SPENCER "

The bill of exceptions being carried before the supreme court of the State of New York, the exceptions were disallowed by the court. The cause was then carried to the Court of Errors of the state, where the judgment of the supreme court of the state was affirmed and the cause was brought to this Court in the manner before stated.

MR. JUSTICE STORY delivered the opinion of the Court.

This is a writ of error to the highest court of law of the State of New York, and the questions which are reexaminable upon the record in this

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court are such only as come within the purview of the 25th section of the Judiciary Act of 1789, ch. 20.

But a preliminary question has been made which must be discussed before proceeding to consider the merits of the cause.

It is contended that the record is not, and cannot be brought, before this Court.

By the judicial system of the State of New York, the decisions of its supreme court are revised and corrected in a Court of Errors, after which the record is returned to the supreme court, where the judgment as corrected is entered and where the record remains. In this case, the writ of error was received by the Court of Errors after the record had been transmitted to the supreme court, whose judgment was affirmed.

It is contended that the record, being no longer in the court of the last resort in the state, can by no process, be removed into this Court.

The Judiciary Act allows the party who thinks himself aggrieved by the decision of any inferior court, five years, within which he may sue out his writ of error and bring his cause into this Court. The same rule applies to judgments and decrees of a state court in cases within the jurisdiction of this Court. As the constitutional jurisdiction of the courts of the union cannot be affected by any regulation which a state may make of its own judicial system, the only inquiry will be whether the Judiciary Act has been so framed as to embrace this case.

The words of the act are "that a final judgment or decree in any suit in the highest court of law or

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equity of a state in which a decision could be had, where is drawn in question," &c.;, "may be reexamined and reversed or affirmed in the Supreme Court of the United States upon a writ of error, the citation being signed," &c.; The act does not prescribe the tribunal to which the writ of error shall be directed. It must be directed either to that tribunal which can execute it, to that in which the record and judgment to be examined are deposited, or to that whose judgment is to be examined, although from its structure it may have been rendered incapable of performing the act required by the writ. Since the law requires a thing to be done, and gives the writ of error, as the means by which it is to be done, without prescribing in this particular the manner in which the writ is to be used, it appears to the court to be perfectly clear that the writ must be so used as to effect the object. It may then be directed to either court in which the record and judgment on which it is to act may be found. The judgment to be examined must be that of the highest court of the state having cognizance of the case, but the record of that judgment may be brought from any court in which it may be legally deposited, and in which it may be found by the writ.

In this case, the writ was directed to the Court of Errors, which, having parted with the record, could not execute it. It was then presented to the supreme court, but, being directed to the Court of Errors, could not regularly be executed by that court. In this state of things the parties consented to waive all objections

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to the direction of the writ, and to consider the record as properly brought up if in the opinion of this Court, it could be now properly brought up on a writ of error directed to the supreme court of New York. The court being of opinion that this may be done, the case stands as if the writ of error had been properly directed.

The original suit was brought by the defendant in error against the plaintiffs in error for an alleged trespass for taking and carrying away and converting to their own use the ship *American Eagle* and her appurtenances and certain ballast and articles of provisions, &c.;, the property of the defendant in error. This is the substance of the declaration, although there are some differences in alleging the

tort in the different counts. The original defendants pleaded, in the first place, the general issue, not guilty, to the whole declaration, and then two special pleas.

The first special plea in substance alleges that the said ship was attempted to be fitted out and armed, and that the ballast and provisions were procured for the equipment of the said ship, and were put on board of the said ship as a part of her said equipment, with intent that the said ship should be employed in the service of a foreign state, to-wit, of that part of the island of St. Domingo which was then under the government of Petion, to commit hostilities upon the subjects of another foreign state with which the United States was then at peace, to-wit, of that part of the Island of St. Domingo which was then under the government of Christophe, contrary to the form of the statute in

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such case made and provided, and that the original defendants, by virtue of the power and authority and in pursuance of the instructions and directions of the President of the United States, seized the said ship, &c.;, as forfeited to the use of the United States, according to the statute aforesaid, &c.;

The second special plea is like the first except that it does not state that the ship was seized as forfeited, but alleges that the ship was taken possession of and detained under the instructions of the President of the United States in order to the execution of the prohibition and penalties of the act in such case made and provided, and except that it omits the allegations under the *videlicets* in the first plea, specifying the foreign state by or against whom the said ship was to be employed.

To these pleas there is a general demurrer and joinder in demurrer, upon which the state court gave judgment in favor of the original plaintiff. Upon the trial of the general issue, a bill of exceptions was taken to the opinion of the court. By that bill of exceptions, among other things, it appears that the original plaintiff, at the trial, gave in evidence, that at the time of the seizure the ship was in his actual full and peaceable possession; that the ship, upon the seizure, had been duly libeled for

the alleged offense in the District Court of New York; that the original plaintiff appeared and duly claimed the said ship, and upon the trial she was duly acquitted and ordered to be restored to the original plaintiff by the district court, and that a certificate of reasonable cause for the seizure of the said ship had been denied. The plaintiff then gave in evidence

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that the value of the ship at the time of her seizure was \$100,000 and that the said Schenck seized and took possession of the said ship by the written directions of the said Gelston, but no other proof was offered by the plaintiff, at that time, of any right or title in the said plaintiff to the said ship, and here the original plaintiff rested his cause. The original defendants then insisted before the court that the said several matters, so produced and given in evidence on the part of the original plaintiff, were not sufficient to entitle him to a verdict, and prayed the court so to pronounce, and to nonsuit the plaintiff. But the court refused the application and declared that the said several matters so produced and given in evidence were sufficient to entitle the plaintiff to a verdict, and that he ought not to be nonsuited, to which opinion the original defendants then excepted, and the original plaintiff then gave in evidence that he purchased the said ship of James Gillespie, who had purchase her of John R. Livingston and Isaac Glason, the owners thereof, and that in pursuance of such purchase, the said Gillespie had delivered full and complete possession of the said ship, &c.;, to the original plaintiff, before the taking thereof by the original defendants.

The original defendants (having given previous notice of the special matter of defense to be given in evidence on the trial under the general issue, according to the laws of New York), offered to prove and give in evidence, by the way of defense and in mitigation of damages, the same matter of forfeiture alleged in their first special plea, with the additional fact that

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the said Gelston was collector, and the said Schenck was surveyor of the customs of the District of New York, and as such, and not otherwise, made the seizure of the ship, &c.; And the original defendants did, thereupon, insist that the said several matters, so offered to be proved and given in evidence, ought to be admitted in justification of the trespass charged against the defendants, or in mitigation of the damages claimed by the plaintiff, and prayed the court so to admit it. But the counsel for the plaintiff, admitting that the defendants had not been influenced by any malicious motive in making the said seizure, and that they had not acted with any view or design of oppressing or injuring the plaintiff, the court overruled the whole of the said evidence so offered to be proved by the original defendants, and did declare it to be inadmissible in justification of the trespass charged against the defendants, and after the admission so made by the original plaintiff's counsel, that the said evidence ought not to be received in mitigation or diminution of the said damages, as the said admission precluded the plaintiff from claiming any damages by way of punishment or smart money, and that after such admission the plaintiff could only recover the damages actually sustained, and with that direction left the cause to the jury.

From this summary of the pleadings and of the facts in controversy at the trial it is apparent that this Court has appellate jurisdiction of this cause only so far as is drawn in question the validity of an authority exercised under the United States and the decision is against the validity thereof and so far as

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is drawn in question the construction of some clause in a statute of the United States and the decision is against the title, right, privilege, or exemption specially set up or claimed by the original defendants, for to such questions (so far as respects this case), the 25th section of the Judiciary Act has expressly restricted our examination. Whether such a restriction be not inconsistent with sound public policy and does not materially impair the rights of other parties as well as of the United States is an inquiry deserving of the most serious attention of the legislature. We have nothing to do but to expound the law as we find it; the defects of the system must be remedied by another department of the government.

The cause will be first considered in reference to the bill of exceptions. In respect to the proof of the original plaintiff's cause of action and the opinion of the court that such proof was sufficient to entitle him to a verdict, no error has been shown upon the argument and certainly none is perceived by this Court. If, however, there were any error in that opinion, we could not reexamine it, for it is not within the purview of the statute. It does not draw in question any authority exercised under the United States nor the construction of any statute of the United States.

In respect to the rejection of the evidence offered by the original defendants to prove the forfeiture and their right of seizure, there can be no doubt that this Court has appellate jurisdiction if by law that evidence ought to have been admitted in justification of the trespass charged on the original defendants, for

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it involves the construction of a statute of and an authority derived from and exercised under the United States.

In order to establish the admissibility of the evidence offered by the defendants, it is necessary for them to sustain the affirmative of the following propositions.

1. That a forfeiture had been actually incurred under the statute of 1794, ch. 50.
2. That it was competent for a state court of common law to entertain and decide the question of forfeitures.
3. That the sentence of acquittal in the district court was not conclusive upon the question of forfeiture; and
4. That the defendants as officers of the customs, had a right to make the seizure.

Upon the last point, there does not seem to be much room for doubt. At common law, any person may at his peril, seize for a forfeiture to the government, and if the government adopt his seizure, and the property is condemned, he will be completely justified, and it is not necessary to sustain the seizure, or justify the condemnation, that the party seizing shall be entitled to any part of the forfeiture.

Hale on the Customs; Harg. Tracts 227; *Roe v. Roe*, Hardr. 185; *Malden v. Bartlet*, Park. R. 105., though *Horne v. Boozey*, 2 Str. 952, seems *contra*. And if the party be entitled to any part of the forfeiture (as the informer under the statute of 1794, ch. 50. is by the express provision of the law), there can be no doubt that he is entitled in that character to seize. *Roberts v. Witherhead*, 12 Mod. 92. In the absence of all positive authority, it might be proper to resort to these principles, in aid of

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the manifest purposes of the law. But there are express statutable provisions, which directly apply to the present case. The Act of 2 March, 1799, ch. 128, s. 70, makes it the duty of the several officers of the customs, to make seizure of all vessels and goods liable to seizure by virtue of any act of the United States respecting the revenue, and assuming the statute of 1794, ch. 50, not to be a revenue law within the meaning of this clause, still the case falls within the broader language of the Act of 18 February, 1793, ch. 8, s. 27, which authorizes the officers of the revenue to make seizure of any ship or goods, where any breach of the laws of the United States has been committed. Upon the general principle then, which has been above stated, and upon the express enactment of the statute, the defendants, supposing there to have been an actual forfeiture, might justify themselves in the seizure. There is this strong additional reason in support of the position, that the forfeiture must be deemed to attach at the moment of the commission of the offense, and consequently, from that moment, the title of the plaintiff would be completely divested, so that he could maintain no action for the subsequent seizure. This is the doctrine of the English courts, and it has been recognized and enforced in this Court upon very solemn argument. [*United States v. 1960 Bags of Coffee*](#), 8 Cranch 398; [*The Mars*](#), 8 Cranch 417; *Roberts v. Witherhead*, 12 Mod. 9; Salk. 223; *Wilkins v. Despard*, 5 T.R. 112.

In the next place, can a state court of common law, entertain and decide the question of forfeiture

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in this case. This is a question of vast practical importance; but in our judgment, of no intrinsic legal difficulty. By the Constitution, the judicial power of the United States extends to all cases of law and equity arising under the Constitution, laws, and treaties of the United States, and to all cases of admiralty and maritime jurisdiction; and by the Judiciary Act of 1789, ch. 20, s. 9, the district courts are invested with exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, and of all seizures on land and water, and of all suits for penalties and forfeitures incurred under the laws of the United States. This is a seizure for a forfeiture under the laws of the United States, and consequently, the right to decide upon the same, by the very terms of the statutes, exclusively belongs to the proper court of the United States, and it depends upon its final decree, proceeding *in rem*, whether the seizure is to be adjudged rightful or tortious. If a sentence of condemnation be pronounced, it is conclusive that a forfeiture is incurred; if a sentence of acquittal, it is equally conclusive against the forfeiture; and in either case the question cannot be litigated in another forum. This was the doctrine asserted by this Court in the case of [Slocum v. Mayberry](#), 2 Wheat. 1, after very deliberate consideration, and to that doctrine we unanimously adhere.

The reasonableness of this doctrine results from the very nature of proceedings *in rem*. All persons having an interest in the subject matter, whether as seizing officers or informers or claimants, are parties or may be parties to such suits so far as their interest

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extends. The decree of the court acts upon the thing in controversy and settles the title of the property itself, the right of seizure, and the question of forfeiture. If its decree were not binding upon all the world upon the points which it professes to decide, the consequences would be most mischievous to the public. In case of condemnation, no good title to the property could be conveyed and no justification of the seizure could be asserted under its protection. In case of acquittal, a new seizure might be made by any other persons *toties quoties* for the same offense, and the claimant be loaded with ruinous costs and expenses. This reasoning

applies to the decree of a court having competent jurisdiction of the cause, although it may not be exclusive. But it applies with greater force to a court of exclusive jurisdiction, since an attempt to reexamine its decree or deny its conclusiveness is a manifest violation of its exclusive authority. It is doing that indirectly which the law itself prohibits to be done directly. It is, in effect, impeaching collaterally a sentence which the law has pronounced to be valid until vacated or reversed on appeal by a superior tribunal.

The argument against this doctrine which has been urged at the bar is that an action of trespass will, in case of a seizure, lie in a state court of common law, and therefore the defendant must have a right to protect himself by pleading the fact of forfeiture in his defense. But at what time and under what circumstances will an action of trespass lie? If the action be commenced while the proceedings *in rem* for the supposed forfeiture are pending in the

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proper court of the United States, it is commenced too soon, for until a final decree, it cannot be ascertained whether it be a trespass or not, since the decree can alone decide whether he taking be rightful or tortious. The pendency of the suit *in rem* would be a good plea in abatement or a temporary bar of the action, for it would establish that no good cause of action then existed. If the action be commenced after a decree of condemnation or after an acquittal, and there be a certificate of reasonable cause of seizure, then in the former case by the general law, and in the latter case by the special enactment of the statute of 25 April, 1810, ch. 64, s. 1, the decree and certificate are each good bars to the action. But if there be a decree of acquittal and a denial of such certificate, then the seizure is established conclusively to be tortious and the party is entitled to his full damages for the injury.

The cases also of *Wilkins v. Despard*, 6. T.R. 112, and *Roberts v. Witherhead*, 12 Mod. 92, Salk. 323, have been relied on to show that a court of common law may entertain the question of forfeiture, notwithstanding the exclusive jurisdiction of the Exchequer *in rem*. But these cases do not sustain the argument. They

were both founded on the Act of Navigation, 12 Car. II, ch. 18, s. 1, which among other things, enacts that one-third of the forfeiture shall go to him "who shall seize, inform, or sue for the same in any court of record." So that it is apparent that in respect to forfeitures under this statute, the Exchequer had not an exclusive jurisdiction, but that the other courts of common law had

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at least a concurrent jurisdiction. And if these cases did not admit of this obvious distinction, certainly they could not be admitted to govern this Court in ascertaining a jurisdiction vested by the Constitution and laws of the United States exclusively in their own courts.

It is therefore clearly our opinion that a state court has no legal authority to entertain the question of forfeiture in this case, and that it exclusively belonged to the cognizance of the proper court of the United States. Indeed no principle of general law seems better settled than that the decision of a court of a peculiar and exclusive jurisdiction must be completely binding upon the judgment of every other court in which the same subject matter comes incidentally in controversy. It is familiarly known in its application to the sentences of ecclesiastical courts, in the probate of wills and granting of administrations of personal estate, to the sentences of prize courts in all matters of prize jurisdiction, and to the sentences of courts of admiralty and other courts acting *in rem*, either to enforce forfeitures or to decide civil rights.

In the preceding discussion we have been unavoidably led to consider and affirm the conclusiveness of the sentence of a court of competent jurisdiction proceeding *in rem* as to the question of forfeiture, and *a fortiori* to affirm it in a case where there is an exclusive jurisdiction. In cases of condemnation, the authorities are so distinct and pointed that it would, after the very learned discussions in the state courts, be a waste of time to examine them at large. Nothing can be better settled than that a sentence of condemnation

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is, in an action of trespass for the property seized, conclusive evidence against the title of the plaintiff. See Harg. Tracts, 467, and cases there cited. *Thomas v. Withers*, cited by Mr. Justice Buller in *Wilkins v. Despard*, 5 T.R. 112. 117; *Scott v. Shearman*, 2 W.Black. 977; *Henshaw v. Pleasance*, 2 W.Black. 1174; *Geyer v. Aquilar*, 7 T.R. 681, and case cited by Lord Kenyon, *id.*, 696; *Meadows v. Dutchess of Kingston*, Ambler 756; 2 Evans' Potheir on Obligations 346 to 367.

A distinction, however, has been taken and attempted to be sustained at the bar between the effect of a sentence of condemnation and of a sentence of acquittal. It is admitted that the former is conclusive, but it is said that it is otherwise as to the latter, for it ascertains no fact. It is certainly incumbent on the party who asserts such a distinction to prove its existence by direct authorities or inductions from known and admitted principles. In the *Duchess of Kingston's Case*, 11 State Trials, 261; Runnington Eject. 36; Hale, Hist. Common Law by Runnington, note 39 &c.;, Lord Chief Justice De Grey declares that the rule of evidence must be, as it is often declared to be, reciprocal, and that in all cases in which the sentences favorable to the party are to be admitted as conclusive evidence for him, the sentences, if unfavorable, are in like manner conclusive evidence against him. This is the language of very high authority, since it is the united opinion of all the judges of England, and though delivered in terms applicable strictly to a criminal suit, must be

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deemed equally to apply to civil suits and sentences. And upon principle, where is there to be found a substantial difference between a sentence of condemnation and of acquittal *in rem* If the former ascertains and fixes the forfeiture, and therefore it is conclusive, the latter no less ascertains that there is no forfeiture, and therefore restores the property to the claimant. It cannot be pretended that a new seizure might, after an acquittal, be made for the same supposed offense, or if made, that the former sentence would not, as evidence, be conclusive, and as a bar be peremptory against the second suit *in rem*.

And if conclusive either way, it must be because the acquittal ascertains the fact that there was no forfeiture. And if the fact be found, it is strange that it cannot be evidence for the party if found one way and yet can be evidence against him, if found another way. If such were the rule, it would be a perfect anomaly in the law and utterly subversive of the first principles of reciprocal justice. The only authority relied on for this purpose is a *dictum* in Buller's Nisi Prius 245, where it is said that though a conviction in a court of criminal jurisdiction be conclusive evidence of the fact, if it afterwards come collaterally in controversy in a court of civil jurisdiction, yet an acquittal in such court is no proof of the reverse, for an acquittal ascertains no fact as a conviction does. The case relied on to support this *dictum*, 3 Mod. 164, contains nothing which lends any countenance to it. Peake's Evid. 3d ed. 47, 48.

But assuming it to be good law in respect to criminal suits, it has

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nothing to do with proceedings *in rem*. Where property is seized and libeled as forfeited to the government, the sole object of the suit is to ascertain whether the seizure be rightful and the forfeiture incurred or not. The decree of the court in such case acts upon the thing itself, and binds the interests of all the world, whether any party actually appears or not. If it is condemned, the title of the property is completely changed and the new title acquired by the forfeiture travels with the thing in all its future progress. If, on the other hand, it is acquitted, the taint of forfeiture is completely removed, and cannot be reannexed to it. The original owner stands upon his title discharged of any latent claims, with which the supposed forfeiture may have previously infected it. A sentence of acquittal *in rem* does, therefore, ascertain a fact as much as a sentence of condemnation; it ascertains and fixes the fact that the property is not liable to the asserted claim of forfeiture. It should therefore be conclusive upon all the world of the nonexistence of the title of forfeiture, for the same reason that a sentence of condemnation is conclusive of the existence of the title of forfeiture. It would be strange indeed if, when the forfeiture *ex directo* could not be enforced against the thing, but by an acquittal was completely purged away, that indirectly the forfeiture might be

enforced through the seizing officer, and that he should be at liberty to assert a title for the government, which is judicially abandoned by or conclusively established against the government itself.

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One argument further has been urged at the bar on this point which deserves notice. It is that the sentence of acquittal ought not to be conclusive upon the original defendants, because they were not parties to that suit. This argument addresses itself equally to a sentence of condemnation, and yet in such case the sentence would have been conclusive evidence in favor of the defendants. The reason, however, of this rule is to be found in the nature of proceedings *in rem*. To such proceedings all persons having an interest or title in the subject matter are, as we have already stated, in law deemed parties, and the decree of the court is conclusive upon all interests and titles in controversy before it. The title of forfeiture is necessarily in controversy in a suit to establish that forfeiture, and therefore all persons having a right or interest in establishing it (as the seizing officer has) are, in legal contemplation, parties to the suit. It is a great mistake to consider the seizing officer as a mere stranger to the suit. He virtually identifies himself with the government itself, whose agent he is, from the moment of the seizure up to the termination of the suit. His own will is bound up in the acts of the government in reference to the suit. For some purposes, as for instance to procure a decree of distribution after condemnation where he is entitled to share in the forfeiture or to obtain a certificate of reasonable cause of seizure after an acquittal, he may make himself a direct party to the suit, and in all other cases he is deemed to be present and represented by the government itself. By the very act of seizure, he agrees to become a party to

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the suit under the government, for in no other manner can he show an authority to make the seizure or to enforce the forfeiture. If the government refuse to adopt his acts or waive the forfeiture, there is an end to his claim; he cannot proceed to

enforce that which the government repudiates. In legal propriety, therefore, he cannot be deemed a stranger to the decree *in rem*; he is at all events a privy, and as such must be bound by a sentence which ascertains the seizure to be tortious. But if he were a mere stranger, he would still be bound by such sentence, because the decree of a court of competent jurisdiction *in rem* is, as to the points directly in judgment, conclusive upon the whole world.

Upon principle, therefore, we are of opinion that the sentence of acquittal in this case, with a denial of a certificate of reasonable cause of seizure, was conclusive evidence that no forfeiture was incurred and that the seizure was tortious, and that these questions cannot again be litigated in any other forum. And if the point had never been decided, we should from its reasonableness and known analogy to other proceedings have had entire confidence in the correctness of the doctrine. But there are authorities directly in point which have never been overruled, nor as far as we know ever been brought judicially into doubt. Above a century ago it was decided by Mr. Baron Price, 12 Vin. Abridgment A B 22, 95, that an acquittal in the Exchequer was conclusive evidence of the illegality of the seizure, and he refused in that case (which was trover for the goods seized) to let the parties in

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to contest the fact over again. This case was cited as undoubted law by Mr. Justice Blackstone in his elaborate opinion in *Scott v. Shearman*, 2 W.BI. 977, and the doctrine was fully recognized by the court, and particularly by Lord Kenyon, in *Cooke v. Sholl*, 5 T.R. 255, although that cause finally went off upon another point. In all the cases which have been decided on this subject, no distinction has ever been taken between a condemnation and an acquittal *in rem*, and the manner in which these cases have been cited by the court, obviously show that no such distinction was ever in their contemplation. If to these decisions we add the pointed language of Lord Chief Justice De Grey in the *Dutchess of Kingston's Case*, 11 State Trials, 218, "that the rule of evidence must be, as it is often declared to be reciprocal," the declaration of Lord Kenyon, in *Geyer v. Aguilar*, 7 T.R. 681, 996, that

"where there has been a proceeding in the Exchequer, and a judgment *in rem*, as long as that judgment remains in force it is obligatory upon the parties who have civil rights depending on the same question,"

and the general rule laid down by Lord Apsley, *Meadows v. Dutchess of Kingston*, Amb. 756, that where a matter comes to be tried in "a collateral way, the decree of a court having competent jurisdiction shall be received as conclusive evidence of the matter," *ex directo* determined, there seems a weight of authority in favor of the doctrine which it is very difficult to resist. We may add that in a recent case which was not cited at the argument, *The Bennet*, 1 Dodson 175, 180, where a ship had been captured

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as a prize as being engaged in an illegal voyage and acquitted by the sentence of a vice-admiralty court, Sir. W. Scott held that by such sentence of a competent tribunal, the question had become *res adjudicata*, and might be opposed with success as a bar to any inquiry into the same facts upon a second capture during the same voyage. Yet here the parties who were captors were different, and the argument might have been urged that the acquittal ascertained no fact. The learned judge, however, considered the acquittal conclusive proof against the illegality of the voyage, and that all the world were bound by the sentence of acquittal *in rem*. And the same doctrine was held by Mr. Justice Buller in his very learned opinion in *Le Caux v. Eden*, Doug. 594, 661, 612.

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This view of the case would be conclusive against the admission of the evidence offered by the original defendants at the trial, as a justification of the asserted trespass. But the other point which has been stated, and which involves the construction of the act of 1794, ch. 50, s. 3, is not less decisive against the defendants. That act inflicts a forfeiture of the ship, &c.;, in cases where she is fitted out and armed or attempted or procured to be fitted out and armed with the intent to be employed

"in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state with whom the United States are at peace."

The evidence offered and rejected was to prove that the ship was attempted to be fitted out and armed and was fitted out and armed with intent that she should be employed in the service of that part of the Island of St. Domingo which was then under the government of Petion, to cruise and commit hostilities upon the subjects, citizens, and property of that part of the Island of St. Domingo which was then under the government of Christophe.

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No evidence was offered to prove that either of these governments was recognized by the government of the United States or of France "as a foreign prince or state," and if the court was bound to admit the evidence as it stood without this additional proof, it must have been upon the ground that it was bound to take judicial notice of the relations of the country with foreign states, and to decide affirmatively that Petion and Christophe were foreign princes within the purview of the statute. No doctrine is better established than that it belongs exclusively to governments to recognize new states in the revolutions which may occur in the world, and until such recognition either by our own government or the government to which the new state belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered. This was expressly held by this Court in the case of [Rose v. Himely](#), 4 Cranch 241, and to that decision on this point we adhere. And the same doctrine is clearly sustained by the judgment of foreign tribunals. *The Manila*, 1 Edwards 1; *Berne v. Bank of England*, 9 Ves. 347; *Dolden v. Bank of England*, 10 Ves. 353, 11 Ves. 283. If, therefore, this were a fact proper for the consideration of a jury and to be proved *in pais*, the court below was not bound to admit the other evidence unless this fact was proved in aid of that evidence, for without it no forfeiture could be incurred. If, on the other hand, this was matter of fact of which the court was bound judicially to take cognizance, then the court was right in rejecting the evidence, for as

far as we have knowledge, neither the government of Petion nor Christophe have ever been recognized as a foreign state by the government of the United States or of France.

In every view, therefore, of this case, the state court were right in rejecting the evidence so far as it was offered in justification. Was it then admissible in mitigation of damages? Upon this point we really do not entertain the slightest doubt. The evidence has no legal tendency to show that any forfeiture had been incurred, and upon the proof already in the cause, the seizure was established to be tortious. The plaintiff admitted that the defendants had acted without malice or an intention of oppression. Under such circumstances, he waived any claim for vindictive damages, and the state court very properly directed the jury that the plaintiff could only recover the actual damages sustained by him. And in no possible shape, consistently with the rules of law, could the evidence diminish the right of the plaintiff to recover his actual damages. We have taken notice of this point the more readily because it was pressed at the bar with considerable earnestness. But in strictness of law the point is not subject to our revision. We have no right on a writ of error from a state court under the act of Congress to inquire into the legal correctness of the rule by which the damages were ascertained and assessed. There is no law of the United States which interferes with, or touches, the question of damages. It is a question depending altogether upon the common law,

and the act of Congress has expressly precluded us from a consideration of such a question. Whether such a restriction can be defended upon public policy or principle may well admit of most serious doubts.

We may now pass to the consideration of the second plea, which asserts as a defense a seizure under the laws of the United States by the express instruction of the President for a supposed forfeiture *in rem* and attempts to put in issue the

question whether such forfeiture was incurred or not. If this plea was well pleaded, then a question may properly be said to arise within the meaning of the 25th section of the Judiciary Act, and as the state court decided against the right and authority set up thereon, the decision is reexaminable in this Court. Several objections have been urged at the bar against the sufficiency of this plea upon technical grounds, and if these objections are well founded, then it may be admitted that the court below may have given judgment on these special grounds, and not have decided against the right and authority set up under the United States. In the first place it is argued, that this plea is bad because it does not answer the whole charge in the declaration, the plea justifying only the taking and detention, and containing no answer to the damaging, spoiling, and conversion of the property charged in the declaration. We are, however, of opinion that the plaintiff can take nothing by this objection. The gist of the action in this case was the taking and detention, and the damaging, spoiling, and conversion were matter of aggravation only,

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and it is perfectly well settled that a plea need answer only the gist of the action, and if the matter alleged in aggravation be relied on as a substantive trespass, it should be replied by way of new assignment. *Taylor v. Cole*, 3 T.R. 292, S.C. H.Bl. 555; *Dye v. Leatherdale*, 3 Wils. 20; *Fisherwood v. Carman*, cited 3 T.R. 297; *Gates v. Bayley*, 2 Wils. 313; 1 Saund. 28, note 3; Cam.Dig. Plead. E. 1; *Monprivatt v. Smith*, 2 Camp. 175. Independent, however, of this general ground, there is in this particular case a decisive answer to the objection, for if the matter of the plea were true and well pleaded, then by the forfeiture the property was completely divested out of the plaintiff, and consequently neither the conversion nor damage were any injury to him.

But there are other defects in this plea which in our judgment are fatal. In the first place, it is not alleged that the ship and her equipments were forfeited for any offense under the laws of the United States. It is true that it is stated that the ship was attempted to be fitted out and armed with intent that she should be employed in the service of a foreign state, &c.;, to commit hostilities upon the subjects of

another foreign state, &c.;, contrary to the statute in such case made and provided. But it is not added whereby and for the cause aforesaid she became and was forfeited to the United States. Nor is this deficiency supplied by the subsequent averment that the ship was, by the instructions of the President, seized "as forfeited to the use of the United States," for the manner and cause of the forfeiture ought to

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be directly stated. The plea is therefore not only argumentative, but it omits a substantive allegation without which it could not be sustained as a bar.

In the next place, the plea is bad because it does not aver that the governments of Petion and Christophe are foreign states which have been duly recognized as such by the government of the United States or of France, which, for reasons already stated, was necessary to complete the legal sufficiency of the plea.

And in our judgment a still more decisive objection is that the plea attempts to draw to the cognizance of a state court a question of forfeiture under the laws of the United States of which the federal courts have, by the Constitution and laws of the United States, an exclusive jurisdiction. For the reasons already mentioned, if the suit for the forfeiture was still pending when the action was brought, that fact ought to have been pleaded in abatement or a temporary bar to such action. If the action was brought before proceedings *in rem* had been instituted, that fact ought to have been pleaded, with an allegation that the jurisdiction of the question of forfeiture exclusively belonged to the district court of the district where the seizure was made, which would have been a plea in the nature of a plea to the jurisdiction of the state court. If the suit were determined then a condemnation, or an acquittal with a certificate of reasonable cause of seizure ought to have been pleaded as a general bar to the action. These are all the legal defenses which the mere seizure could justify, and if these all failed, then the

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seizing officer must have been deemed guilty of the trespass. The plea then stops short of the allegations which the seizing officer was bound to make to sustain his defense, and it attempts to put in issue matter which, standing alone, no court of common law is competent to try. The demurrer then may well be sustained to this plea, since the party demurring admits nothing except what is well pleaded, and the plea being bad in substance, there is in point of law no confession of any forfeiture.

The third plea differs in several respects from the second, and is that on which the Court has felt its principal difficulty. It asserts that the ship was attempted to be fitted out and armed with intent that she should be employed in the service of some foreign state to commit hostilities upon the subjects of another foreign state with which the United States was then at peace, contrary to the form of the statute in such case made and provided, and that the defendants, by virtue of the instructions of the President, "did take possession of, and detain" the said ship, &c.;, "in order to the execution of the prohibitions and penalties of the act in such case made and provided." It omits to allege any forfeiture of the ship or that she was seized as forfeited. So far then as the plea may be supposed to rely on such forfeiture as a justification, it is open to the same objections which have been stated against the second plea.

Another objection has been urged at the bar against this plea, which does not apply to the second. It is that it does not specify the foreign state in

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whose service or against whom the ship was intended to be employed. As the allegation follows the words of the statute, it has sufficient certainty for a libel or information *in rem* for the asserted forfeiture under the statute, and consequently it has sufficient certainty for a plea. Indeed there is as much certainty as there would have been if it had been averred that it was in the service of or against some foreign state unknown to the libellant which has been adjudged in this Court to be sufficient in an information of forfeiture. [Locke v. United States](#), 7 Cranch 339.

But the main objection to this plea is that it attempts to justify the taking possession and detaining of the ship under the instructions of the President when the facts stated in the plea do not bring the case within the purview of the statute of 1794, ch 50, which is relied on for this purpose. This statute, in the seventh section, provides that in every case in which a vessel shall be fitted out and armed or attempted to be fitted out and armed or in which the force of any vessel of war, cruiser, or other armed vessel, shall be increased or augmented, or in which any military expedition or enterprise shall be begun or set on foot contrary to the prohibitions and provisions of that act, and in every case of the capture of a ship or vessel within the jurisdiction or protection of the United States, and in every case in which any process issuing out of any court of the United States shall be disobeyed or resisted by any person or persons having the custody of any vessel of war, cruiser, or other armed vessel of any foreign prince or state

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or of the subjects or citizens of any such prince or state; in every such case, it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be judged necessary for the purpose of taking possession of and detaining any such ship or vessel, with her prize or prizes, if any, in order to the execution of the prohibitions and penalties of the act, &c.;

It is to be recollected that this third plea does not allege any forfeiture or justify the taking and detaining of the ship for any forfeiture, and that it does not allege that the President did employ any part of the land or naval forces or militia of the United States for this purpose, or that the original defendants, or either of them, belonged to the naval or military forces of the United States, or were employed in any such capacity, to take and detain the ship, in order to the execution of the prohibitions and penalties of the act. But the argument is that as the President had authority by the act to employ the naval and military forces of the United States for this purpose, *a fortiori* he might do it by the employment of civil force. But upon the most deliberate consideration, we are of a different opinion. The power thus

entrusted to the President is of a very high and delicate nature, and manifestly intended to be exercised only when, by the ordinary process or exercise of civil authority, the purposes of the law cannot be effectuated. It is to be exerted on extraordinary occasions, and subject to that high responsibility

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which all executive acts necessarily involve.

Whenever it is exerted, all persons who act in obedience to the executive instructions, in cases within the act, are completely justified in taking possession of, and detaining the offending vessel, and are not responsible in damages for any injury which the party may suffer by reason of such proceeding. Surely it never could have been the intention of Congress, that such a power should be allowed as a shield to the seizing officer, in cases where that seizure might be made by the ordinary civil means? One of the cases put in the section is where any process of the courts of the United States is disobeyed and resisted, and this case abundantly shows that the authority of the President was not intended to be called into exercise unless where military and naval force were necessary to ensure the execution of the laws. In terms, the section is confined to the employment of military and naval forces, and there is neither public policy nor principle to justify an extension of the prerogative beyond the terms in which it is given. Congress might be perfectly willing to entrust the President with the power to take and detain whenever in his opinion the case was so flagrant that military or naval force was necessary to enforce the laws, and yet with great propriety deny it, where, from circumstances of the case, the civil officers of the government might, upon their private responsibility, without any danger to the public peace, completely execute them. It is certainly against the general theory of our institutions to create great discretionary powers by implication, and in the present instance

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we see nothing to justify it. The third plea is therefore, for this additional reason, bad in its very substance, and the state court were right in giving judgment on the

demurrer for the original plaintiff.

The judgment of the Court for the Correction of Errors of the State of New York is affirmed with damages at the rate of 6 percent upon the judgment, from the rendition thereof, and costs.

MR. JUSTICE JOHNSON.

As the opinion delivered in this case goes into the consideration of a variety of topics which do not appear to me to be essential to the case, I will present a brief view of all that I consider as now decided.

Three pleas are filed to the action. The first is the general issue, under which, according to the practice of the state from which the case comes, notice was given that the forfeiture would be given in evidence.

The second plea is a justification, on the ground of a seizure under the order of the President for the forfeiture incurred under the third section of the act of 1794.

The third is a justification under the order of the President to detain for the purpose of enforcing the prohibitions and penalties incurred under the third section. And this order is supposed to have been issued under authority given in the seventh section.

On the first plea issue was taken, and on the trial the state court refused to admit evidence of the forfeiture

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on the ground that the acquittal in the district court was conclusive against the forfeiture. And on this point this Court is of opinion that the state court decided correctly. This Court is also of opinion that the state court could not have tried the question of forfeiture arising under the laws of the United States. But this point would have been fatal to the suit, not to the defense, had it been properly pleaded.

To the second and third pleas the defendant demurred, but as the second plea contained only an argumentative, and of course defective averment of the forfeiture, viz., "seized as forfeited" -- that is "because forfeited" -- that plea did not bring up the question of forfeiture or any question connected with it.

Neither does not third plea bring up the question of forfeiture, for the justification therein relied on is wholly independent of the forfeiture, and rests upon the order of the President to detain for trial, in effect. And hence the only other point in the case is whether the seventh section of the act empowered the President to issue such an order. And on this point we are of opinion that there is no power given by that act to authorize a seizure, but only to call on the military or naval forces to enforce a seizure when necessary. The defense set up is not founded upon the exercise of such a power, but upon a supposed order to the defendants, in their private individual character, to take and detain. The act therefore does not sustain the defense.

Judgment affirmed.

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Mr. D. B. Ogden inquired to which of the state courts the mandate to enforce the judgment was to be transmitted.

MR. CHIEF JUSTICE MARSHALL.

We must consider the record as still remaining in the supreme court of New York, and consequently the mandate must be directed to that court.

Mandate to the Supreme Court of New York.

JUDGMENT. This cause came on to be heard on the transcript of the record of the Supreme Court of Judicature of the people of the State of New York, returned with the writ of error issued in this case, and was argued by counsel. On consideration whereof, it is adjudged and ordered, that this Court having the power of revising, by writ of error, the judgment of the highest court of law in any state, in the cases

specified in the act of Congress, in such case provided, at any time within five years from the rendition of the judgment in the said courts, have the power to bring before them the record of any such judgment, as well from the highest court of law in any state, as from any court to which the record of the said judgment may have been remitted, and in which it may be found, when the writ of error from this Court is issued. And the Court therefore, in virtue of the writ of error in this cause, does proceed and take cognizance of this cause upon the transcript of the record now remaining in the Supreme Court of Judicature of the people of the State of New York, and it does hereby adjudge and order that the judgment of the Court for the Trial of Impeachments and

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Correction of Errors in this case be and the same is hereby affirmed, with costs and damages at the rate of six percentum per annum on the amount of the judgment of the said Court for the Trial of Impeachments and Correction of Errors of the State of New York, to be computed from the time of the rendition of the judgment of the said Court for the Trial of Impeachments and Correction of Errors of the State of New York.

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