Considerable doubts were entertained respecting the right of Watts to more than the unsurveyed part of the entry. But a majority of the court is of opinion that he stands precisely in the place of O'Neal.

As Massie does not show that he had conveyed any of that part of Powell's survey which is included within O'Neal's entry, previous to the institution of this suit, or even now, the allegation that he has conveyed a part of Powell's survey, could not furnish sufficient matter for preventing the decree which was rendered. The decree of the circuit court is affirmed with costs.

Decree affirmed.

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*171] *UNITED STATES *v.* HALL and WORTH.

Embargo bond.

If a vessel be driven by stress of weather to the West Indies, and the cargo there detained by the government of the place, this is such a casualty as comes within the exception of "dangers of the seas," in the condition of an embargo bond.[1]

United States *v.* Hall, 2 W. C. C. 366, affirmed.

ERROR to the Circuit Court for the district of Pennsylvania, in an action of debt upon an embargo bond, dated December 29th, 1807, the condition of which was, to reland certain goods in some port of the United States, "the dangers of the seas only excepted."

The vessel on board of which the goods were laden, cleared out and sailed from Philadelphia, for East Portland, in the district of Maine, but having encountered severe and tempestuous weather, her crew disabled in a great degree, she was obliged, in order to escape from the danger of Nantucket shoals, to change her course, and to endeavor to gain the port of Charleston. The weather and the winds, however, were so severe and adverse that she could not make Charleston, nor any other port of the United States, and was obliged to bear away for the West Indies to obtain relief. She arrived at Porto Rico in distress. The governor ordered the cargo to be landed and sold, with which order the master was obliged to comply, and did land and sell the same. She could not leave the island, without considerable repairs, which were accordingly made.

The court below instructed the jury, that these facts, if believed by them, were, upon the whole case, sufficient to bar the United States of their action. The verdict and judgment were accordingly for the defendants, and the United States sued out a writ of error.

The bond was taken in pursuance of the directions of the act of 22d of December 1807, usually called the embargo act (2 U. S. Stat. 451), and before any of the supplemental acts on that subject were passed.

The 3d section of the act of March 12th, 1808 (2 U. S. Stat. 474), provided that in every case where a bond had been given under the act of 22d
*172] of December 1807, conditioned to reland the goods, &c., the parties *should, within four months after the date of the same, produce to the collector a certificate of the relanding, &c., on failure whereof, the bond should be put in suit, and judgment should be given against the defendants, "unless proof shall be produced of such relanding, or of loss by sea, or other unavoidable accident."

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[1] S. P. Durousseau *v.* United States, *post*, p. 307; The William Gray, 1 Paine 16.

The 7th section of the act of January 9th, 1809 (2 U. S. Stat. 508), usually called the enforcing act, provides that in all cases where, under the act of 22d of December 1807, a bond has been given to reland, &c., the parties shall, within two months after the date of the same, produce to the collector, a certificate of the relanding of the goods, from the collector of the proper port; on failure whereof, the bond shall be put in suit, and judgment shall be given against the defendants, "unless proof shall be given of such relanding, or of loss of the vessel at sea. But neither capture, distress, or any other accident whatever, shall be pleaded or given in evidence in any such suit, unless such capture shall be expressly proved to have been hostile; and such distress or accident occasioned by no negligence or deviation; nor unless such vessel shall have been, from the commencement of the voyage, wholly navigated by a master, mate or mates, mariners and crew, all of whom shall be citizens of the United States, &c.

Rodney, Attorney-General, and *Jones*, for the United States.—In order to excuse the party, he must show that the goods have been actually lost by the dangers of the seas. If the vessel were irresistibly driven by a tempest to Porto Rico, yet the goods arrived there in safety, and were not lost. The party had the full benefit of them, and probably, at a higher price than if he had landed them in the United States. If the law of the 12th of March affects the case, yet it must be a loss by sea, or a loss by other unavoidable accident. When the legislature particularly except certain cases, no other exceptions can be presumed. No loss can be said to be by the dangers of the seas, unless the sea be the proximate cause of the loss. **Greene* v. *Elmslie*, Peake's Cas. 212; 4 T. R. 783; Bunb. 37. The vested [*173 rights of parties may be varied by posterior laws. The prohibition in the constitution respecting *ex post facto* laws, applies only to criminal cases.

Hopkinson, contrà.—1. This was a loss by the dangers of the seas: and 2. We are entitled to the benefit of the act of 12th of March 1808, by which unavoidable accident is an excuse.

1. The first embargo law means such a kind of a loss as prevents the relanding of the goods in the United States. It does not mean, where the loss is occasioned by the immediate dangers of the element, but any loss to which vessels are exposed in consequence of the dangers of the seas. Thus, capture by pirates is a loss by one of the dangers of the seas. The expression has the same meaning in the act, as it has in bills of lading. If this action had been upon the bill of lading, instead of the bond, such an accident would have been a sufficient excuse to the master for not delivering the goods. So in a policy of insurance. Abbott 155, Amer. edit.; 2 Roll. Abr. 248, pl. 10; Marshall 418, 1st edit.; Abbott 168; *Garrigues* v. *Coxe*, 1 Binn. 592; Marshall 488, 2d edit.

The vessel was by the weather forced into Porto Rico. She could not return without repairs. She could not obtain repairs, without leave of the governor. That leave could not be obtained, but by obedience to his orders. His orders prevented the re-landing of the goods according to the condition of the bond.

The case cited from Peake only shows that the loss was within the description of loss by capture, not that it was not a loss by the dangers of the seas. The case *from Bunbury was a mere private trespass; [*174

so was that cited from 4 T. R. 783. It was not an act of the government. The assured had a private remedy against the trespassers.

2. We have a right to the benefit of the act of 12th of March, and are excused, if prevented from relanding by any unavoidable accident. There is a difference, as to *ex post facto* laws, between those which mitigate, and those which increase, the penalty. The act expressly refers to bonds taken under the prior law. It does not mean loss by unavoidable accident, but prevention by such accident. The punctuation of the sentence, as printed in the statute book, favors this construction; but if it be doubtful, the court will lean against the penalty.

But the property was lost to the owner, within the meaning of the statute. He had no power over the thing itself; he could not bring it away. It is immaterial, whether he obtained an equivalent or not; the letter of the condition of the bond could only be satisfied by relanding the thing itself. A compliance with the condition was to him as impossible as if the goods had perished in the sea.

3. The act of January 9th, 1809, cannot apply to this case, so as to make that penal which before was justifiable.

MARSHALL, Ch. J., stopped the counsel, and observed, that the court would never consider the penal act as applying to previous facts, unless such construction be absolutely unavoidable.

March 3d, 1810. MARSHALL, Ch. J., delivered the opinion of the court, as follows:—This suit was instituted on a bond taken in pursuance *of
*175] the original embargo act, with a condition that the cargo of the schooner Mary, a sea-letter vessel, should be relanded in the port of East Portland, or some other port of the United States, "the dangers of the seas only excepted." Her cargo was not relanded within the United States, but was carried to Porto Rico and sold. The defendants allege that they were driven by stress of weather into Port Rico, where the cargo was landed by order of the government; and they insist, that the case is within the exception contained in the condition of the bond. The circuit court instructed the jury, that, if they believed the testimony, it was sufficient in law to bar the action. To this opinion, the counsel for the United States excepted; and its propriety is now to be considered.

The improbability of the allegations made by the defendants is no longer the subject of inquiry. The jury have verified them, and the court must receive them as true. The testimony is, that the Mary was driven by tempestuous weather into a foreign port. That, while prosecuting her voyage, she encountered weather which so disabled both the crew and vessel, and put her in such a situation that, to escape Nantucket shoals, "she was obliged to change her course, and endeavor to gain a southern port." She changed her course, and bore for Charleston. But such was the condition of the crew and of the vessel, and so severe and so adverse were the winds, that she, "could not make Charleston, nor any other port of the United States, and was obliged to bear away for the West Indies, to obtain relief."

The vessel, then, was driven into Porto Rico by the cause which forms the exception in the condition of the bond, and if the cargo had been lost, at the mouth of the harbor, instead of entering the port, all would admit that the penalty of the bond had not been incurred. But it is contended, that

the dangers of the seas terminated on entering the port, and that no sufficient cause is shown for not bringing back the cargo to the United States. *The case states that the governor of Porto Rico issued an order that the cargo should be landed and sold, "with which order the master was obliged to comply." As this case is staed, the Mary was driven into Porto Rico, and the sale of her cargo, while there, was inevitable. The dangers of the sea placed her in a situation which put it out of the power of the owners to reland her cargo within the United States. The obligors, then, were prevented, by the dangers of the seas, from complying with the condition of the bond; for an effect, which proceeds, inevitably, and of absolute necessity, from a specified cause, must be ascribed to that cause. [*176

It is the unanimous opinion of this court, that there is no error in the proceedings of the circuit court, and that the judgment be affirmed.

Judgment affirmed.

Campbell *v.* Gordon and Wife.

Naturalization.

A certificate by a competent court, that an alien has taken the oath prescribed by the act respecting naturalization, raises a presumption that the court was satisfied as to the moral character of the alien, and of his attachment to the principles of the constitution of the United States, &c.[1]

The oath, when taken, confers the rights of a citizen. It is not necessary, that there should be an order of court, admitting him to become a citizen.

The children of persons duly naturalized, before the 14th of April 1802, being under age at the time of the naturalization of their parent, were, if dwelling in the United States on the 14th of April 1802, to be considered as citizens of the United States.

This was an appeal from a decree of the Circuit Court for the district of Virginia, dismissing the bill of the complainant.

The case was stated by Washington, J., in delivering the opinion of this court, as follows:—

"The object of the bill was to rescind a contract made between the appellant and Robert Gordon, the appellee, for the sale of a tract of land by the latter to the former, upon the ground of a defect of title. The facts in the case, which are not disputed, appear to be as follows: The land which forms the subject of dispute belonged to James Currie, a citizen of Virginia, who died seised thereof in fee, on the 23d of April 1807, intestate, and without issue. James Currie had one brother of the whole blood, named William, who, prior to the 14th day of October, in the year 1795, was a subject of the King of Great Britain, but who emigrated *to the United States, and on the day last mentioned, at a district court, held at Suffolk, in Virginia, took the oath prescribed by the act of congress, for entitling himself to the rights and privileges of a citizen. At the time when this oath was taken, William Currie had one daughter, Janetta, the wife of the appellee, who was born in Scotland. She came to the United States, in October 1797, whilst an infant, during the life of her father, and hath ever since continued to reside in the state of Virginia. William Currie died prior to the 23d of April 1807. [*177

[1] And see Stark *v.* Chesapeake Ins. Co., 7 Cr. 420; Spratt *v.* Spratt, 4 Pet. 393; The Acorn, 2 Abb. U. S. 434.