secured, according to law, on goods not liable, by law, to duty. The legislature must be understood, when saying "upon which the duties have been previously paid or secured according to law," to mean, "upon which the duties, if any, have been previously paid," &c.

It is the opinion of the court, that the sentence of the circuit court be reversed as to so much of the cargo of the sloop Active as is claimed as the property of ——— Gates, and be affirmed as to the vessel and the residue of the cargo. And it is directed, to be certified, that there was probable cause of seizure.

The Clarissa Claiborne. (*a*)

Hawthorn, Claimant of the Brig Clarissa Claiborne, *v.* United States.

Evidence on appeal in admiralty.

This court will grant a commission to take new evidence to be used here, in a case of admiralty jurisdiction.

This was an appeal from the sentence of the District Court at New Orleans, condemning the brig Clarissa Claiborne, for violating a law of the United States.

*108] *Hare* moved for a *certiorari*, upon a suggestion of diminution of the record, in not sending up the depositions of the witnesses.

Marshall, Ch. J.—What prevents you from producing the witnesses here, or taking their depositions *de novo?*

Hare suggested a doubt, whether cases for violation of the embargo, are cases of admiralty, or of prize jurisdiction.

However, on a subsequent day he moved for, and obtained a commission to take the depositions of witnesses at New Orleans, to be used on the trial in this court, at the next term.

A like commission was granted in the case of *Williams* v. *Armroyd*, at this term.

United States *v.* John Goodwin.

Appellate jurisdiction.

No writ of error lies to the supreme court of the United States, to reverse the judgment of a circuit court in a civil action, which has been carried up to the circuit court from the district court, by writ of error.[1]

This was an action of debt, brought originally in the District Court for the district of Pennsylvania, by the United States, against John Goodwin, for $15,000, as a penalty for not entering goods agreeable to the prime cost

---

(*a*) February 20th, 1812. Present, all the judges.

[1] United States *v.* Gordon, *post*, p. 287; United States *v.* Barker, 2 Wheat. 395; Sarchet *v.* United States, 12 Pet. 143. But afterwards remedied by statute, see R. S. § 691.

at the place of exportation, with intent to defraud the revenue. The judgment of the district court, which was in favor of the United States, was, upon a writ of error, reversed in the circuit court; and thereupon, the United States sued out the present writ of error to this court.

A doubt having been suggested, whether this court could take jurisdiction by writ of error, in a civil action, which had been carried up by writ of error, from the district court to the circuit court, that question was submitted to this court, without argument.

*At a subsequent day, viz., March 10th, 1812 (all the judges being present), WASHINGTON, J., delivered the opinion of the court, as follows:—This case stands upon a writ of error to the circuit court for the district of Pennsylvania. By the record, it appears, that an action of debt was brought, in the name of the United States, against the defendant in error, in the district court of Pennsylvania; in which judgment was rendered for the United States. On a writ of error to the circuit court for that district, that judgment was reversed; and upon like process, the cause has been brought into this court for re-examination. A rule has been obtained by the defendant in error, upon the United States, to show cause why the writ of error should not be dismissed; and the ground of the rule is, that, as the cause was not removed from the district into the circuit court, by appeal, but by writ of error, there is no provision in any of the laws of the United States, giving jurisdiction to this court, to re-examine the judgment of the circuit court, upon a writ of error or otherwise. This question can only be decided by an attentive consideration of the different acts of congress on this subject. [*109

The 21st section of the judicial law of 1789, declares, that from final decrees in a district court, in cases of admiralty and maritime jurisdiction, where the matter in dispute, exclusive of costs, exceeds $300, an appeal shall be allowed to the circuit court. The 22d section provides, that final decrees and judgments, in civil actions, in a district court, where the matter in dispute exceeds the value of $50, exclusive of costs, may be re-examined and reversed or affirmed in a circuit court, upon a writ of error. This section then proceeds to declare, that, upon a like process (that is to say, upon a writ of error), may final judgments and decrees, in civil actions and suits in equity, in a circuit court, brought there by original process, or removed there from the state courts, or by appeal from a district court, where the value exceeds $2000, exclusive of costs, be re-examined and reversed or affirmed in the supreme court.

*The 2d section of the act of the 3d of March 1803, so far changes the above sections of the act of 1799, that whereas, the latter allows an appeal from the district to the circuit court, only in admiralty and maritime cases, where the value in dispute, exclusive of costs, exceeds $300, the former provides an appeal from all final judgments or decrees in a district court, where the matter in dispute, exclusive of costs, exceeds $50, and also an appeal to the supreme court, from all final decrees and judgments in a circuit court, in cases of equity, of admiralty and maritime jurisdiction, and of prize or no prize, where the value, exclusive of costs, exceeds $2000. But this law makes no provision for the appellate jurisdiction of the supreme court in any other cases than those above mentioned. Consequently, we [*110

must refer to the sections of the act of 1789, before noticed (which are still in force, except so far as they are inconsistent with the provisions of the act of 1803), to see in what cases, other than those provided for by the act of 1803, the supreme court can review the decisions of the circuit courts. It has been shown, that all final judgments or decrees in civil actions and suits in equity, in a circuit court, brought there by original process, or removed from the state courts, or by appeal from a district court, may be re-examined in the supreme court, upon a writ of error. But no case can, under this act, be removed from a district court, by appeal, except it be of admiralty and maritime jurisdiction; and consequently, under the literal construction of this law, no other cases could be carried from the circuit court to the supreme court.

The question then, is, whether the word appeal, in the 22d section, is to be understood technically, or merely as descriptive of the appellate jurisdiction of the superior court, without regard to the particular mode by which a cause is transmitted to that jurisdiction? This question appears to have been considered by the supreme court so early as the year 1796, in the case of *Wiscart* v. *D'Auchy*. Chief Justice ELLSWORTH, in delivering the opinion of the court in that case, expresses himself, as follows:—"The act of 1789, speaks of appeal and writ of error, but does not confound them. They are to be understood according to their ordinary acceptation. An appeal is a civil-law process, and removes a cause entirely, subjecting the
*111] law and fact to a review and retrial. *A writ of error is a common-law process, and removes for re-examination, nothing but the law. This statute observes this distinction. In admiralty and maritime causes, an appeal is allowed from the district to the circuit court, if the matter in dispute exceeds $300, and yet decrees and judgments in civil actions may be removed by writ of error, from the district to the circuit court, though the value barely exceeds $50." In another part of this opinion, the judge adds, "that as to the appellate jurisdiction of the supreme court, the 22d section says, and upon a like process, that is, upon a writ of error, shall final judgments and decrees in civil actions, viz., cases not criminal, and suits in equity, &c. Among the causes which may be brought to the supreme court, by writ of error, are cases which had been removed, to the circuit court, by appeal from a district court, which can only be cases of admiralty and maritime jurisdiction."

The objection made to this interpretation of the word appeal, that judgments in civil actions at common law, commenced in a district court, could be re-examined only in a circuit court, if well founded in itself, could not, with any propriety, be addressed to courts, after the legislative meaning of the term is ascertained. The technical distinction between a writ of error and an appeal, and between the different cases to which they were applicable, was clearly marked in the act of 13th February 1801, which was afterwards repealed by the act of the 8th of March 1802. The former act, after providing for the removal of all final judgments or decrees, above the value of $50, from a district to a circuit court, by appeal, and by a like proceeding for a removal to the supreme court, of those cases only, which were of equity, of admiralty and maritime jurisdiction, and of prize or no prize, proceeded to provide for civil actions at common law, originating in a district court, by declaring that final judgments, in such cases, if of a certain value,

might be removed, at once, from the district to the supreme court, by writ of error. So that, as the law stood at that time, a party, in cases at common law, had an election to carry his case, where it exceeded $2000, by writ of error, from the district to the circuit court, under the 22d section of the act of 1789, but without the privilege of proceeding *farther, or to proceed with his cause, at once, to the supreme court, passing by the circuit court. But it appears not to have been the policy of the legislature, at that time, to subject the decisions of the district court, in civil cases at common law, to more than one re-examination in an appellate court. [*112

Writ of error dismissed.

Whelan *v.* United States.

Jurisdiction of the admiralty.

Cases of seizure upon waters navigable from the sea, by vessels of more than ten tons burden, for breach of the laws of the United States, are civil cases of admiralty and maritime jurisdiction, and are to be tried without a jury.

This cause standing so late on the docket that it was not likely to be called for trial at this term, *Dallas*, for the United States, suggested the propriety of assigning a particular day for the hearing, as it was a case of importance, and involved a question of jurisdiction, viz., whether a seizure of a vessel, on waters navigable from the sea for vessels of ten and more tons burden, for breach of a law of the United States, was to be tried by a jury. This question was said to be important, because the judge of the district of Pennsylvania had refused to try any cases of that kind, until the question was finally settled by this court.

The Court accordingly assigned a day for hearing that question, but intimated an opinion that it was already decided in the cases of *The Vengeance*, 3 Dall. 297; *The Betsey and Charlotte*, 4 Cr. 443; and *Yeaton* v. *United States*, 5 Ibid. 281.

E. Tilghman, for the appellant, after looking into those cases, abandoned the question as to jurisdiction, considering the cases cited as conclusive against him.

February 20th, 1812. The Court (all the judges being present) said, that the question had been certainly settled in this court, upon full argument.

---

*The Eliza. (*a*) [*113

United States *v.* The Brig Eliza.

Seizure for violation of embargo.

A vessel which has proceeded to a foreign port, contrary to the embargo act of January 9th, 1808, is liable to be seized, upon her return, although that act gives a penalty of double her value, in case she should not be seized.

This was an appeal from the sentence of the Circuit Court for the district of Delaware, which affirmed that of the district court, which dismissed the

(*a*) February 22d, 1812. Present, all the judges.