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.

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*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.

libel, and ordered the vessel to be restored. She had been seized by the collector of the district of Delaware, for having "proceeded to a foreign port or place" (viz., to Havana), contrary to the 3d section of the act of January 9th, 1808 (2 U. S. Stat. 453), "supplementary to the act, entitled an act laying an embargo on all ships and vessels in the ports and harbors of the United States;" and for having exported from the United States sundry goods, &c., contrary to the 4th section of the act of March 12th, 1808, "in addition to the act, entitled an act supplementary to the act, entitled an act laying an embargo," &c. (2 U. S. Stat. 474.)

By the 3d section of the act of January 9th, 1808, it is enacted, that if any vessel shall, contrary to the provisions of that act, or of the act to which that is a supplement, proceed to a foreign port or place, such vessel shall be wholly forfeited, "and if the same shall not be seized, the owner or owners, agent, freighter or factors of any such ship or vessel, shall, for every such offence, forfeit and pay a sum equal to double the value of the ship or vessel and cargo, and shall never thereafter be allowed a credit for duties," &c., "and the master or commander of such ship or vessel, and all other persons who shall knowingly be concerned in such prohibited foreign voyage, shall each respectively forfeit and pay a sum not exceeding twenty thousand, nor less than one thousand dollars, for every such offence, whether the vessel be seized and condemned or not."

By the 4th section of the act of March 12th, 1808, it is enacted, "that it
*114] shall not be lawful to export from the *United States, in any manner whatever, any goods, wares or merchandise of foreign or domestic growth or manufacture, and if any goods, wares or merchandise shall, during the continuance of the act, entitled an act laying an embargo," &c., "and of the act supplementary," &c., "contrary to the prohibitions of this act, be exported from the United States, either by land or water, the vessel," &c., "in which the same shall have been exported, shall, together with the tackle, apparel," &c., "be forfeited, and the owner or owners of such goods," &c., "and every other person knowingly concerned in such prohibited exportation, shall each respectively forfeit and pay a sum not exceeding ten thousand dollars, for every such offence."

Joseph R. Ingersoll, for the appellees (the claimants of the vessel), contended, that as the vessel was once out of the jurisdiction of the United States, after the offence committed, the United States could only sue for the penalty of the double value, and could not seize the vessel itself. That the offence was complete, before the return of the vessel, and while she was absent, she could not be seized; that the words "if the same shall not be seized, mean, if the same cannot be seized. That as the vessel could not be seized, before her return, and as the offence was complete, before her return, the case had happened in which the United States were entitled to sue for the double value; and as the forfeiture of the vessel and the penalty of double value were not concurrent and cumulative remedies, the United States could only resort to the latter. The right to seize the vessel was lost by her escape, and could not be revived, upon her return. If the United States had brought suit for the penalty, before the return of the vessel, they might have supported it, although the vessel should have returned before judgment. Their right of action was complete.

Dallas, contrà.—There is no limitation of time for the seizure; the vessel has actually been seized, and thereby the United States have relinquished their claim to the double value. If the vessel could be seized, it is probable, the United States *could not have recovered the double value; and in an action therefor, it would have been necessary for the United States [*115 to prove that the vessel could not have been seized. This could not be proved, while the vessel was lying in a port of the United States, liable to seizure.

March 5th, 1812. All the judges being present, MARSHALL, Ch. J., stated, that it was the opinion of the court, that the vessel was liable to seizure; but that a majority of the court was of opinion, that the offence was not complete, until the arrival of the vessel in a foreign port; but the facts of the case do not appear so as to enable the court to decide that point; the cause is, therefore, continued, for further proof.

UNITED STATES *v.* CROSBY.

Conflict of laws.

The title to land can be acquired and lost only in the manner prescribed by the law of the place where such land is situate.[1]

THIS case is fully stated in the following opinion of this court, which was delivered by—

STORY, Justice, on the 24th of February, all the judges being present.

A writ of intrusion was brought by the United States against the defendant in error, to recover possession of an undivided part of certain land lying within the district of Maine. Upon the trial of the cause in the district court of that district, a special verdict was found by the jury, upon which the same court gave judgment in favor of the defendant in error. This judgment was afterwards affirmed in the circuit court of Massachusetts, and is now before the supreme court for a final decision.

By the special verdict, it appears, that the claim of the United States to the land in controversy is under one *Nathaniel Dowse, who derived [*116 his title, if any, from an instrument stated at large in the same verdict, and executed in his favor, by one John Nelson. The instrument is without a seal, and was executed at the Island of Grenada, in the West Indies, before a notary-public, according to the mode prescribed, by the existing laws, to pass real estate in that colony; and both parties were, at that time residents therein.

By the laws of Massachusetts, no estate of freehold in land can be conveyed, unless by a deed or conveyance under the hand and seal of the party; and to perfect the title as against strangers, it is further requisite, that the deed should be acknowledged before a proper magistrate, and recorded in the registry of deeds for the county where the land lies.

The question presented for consideration, is, whether the *lex loci contractûs* or the *lex loci rei sitæ* is to govern, in the disposal of real estates.

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[1] Clark *v.* Graham, 6 Wheat. 577; Kerr *v.* Moon, 9 Id. 565; Watts *v.* Waddle, 6 Pet. 389; Perry Manufacturing Co. *v.* Brown, 2 W. & M. 450; Root *v.* Brotherson, 4 McLean 230.