As to the eighth question. We are of opinion, that a better subsisting adverse title in a third person, is no defence in a writ of right. That writ brings into controversy only the mere rights of the parties to the suit.

At to the ninth question. We have already expressed our opinion, that tenants claiming different parcels of land by distinct titles cannot be joined in a writ of right. If, however, they omit to plead in abatement and join the *mise*, it is an admission that they are joint-tenants of the whole; and the verdict, if for the demandant, for any parcel of the land, may be general, that he hath more mere right to hold the same than the tenants; and if of any parcel, for the tenants, that they have more mere right to hold the same than the demandant.

As to the tenth question. The general rule is, that if a man enter into lands, having title, his seisin is not bounded by his actual occupancy, but is held to be co-extensive with his title. But if a man enter without title, his seisin is confined to his possession by metes and bounds. In the case put by the court below, the first patentee had the better legal title; and his seisin, presently, by virtue of his patent, gave him the best mere right to the whole land, upon the principles which we have already stated: *à fortiori*, he must have the best mere right to the land not included in the actual close of the second patentee. For, by construction of law, he has the eldest seisin as well as the eldest patent.

As to the eleventh point. We are of opinion, that if a man having title to land, enter into a part, in the name of the whole, he is, upon common-law principles, adjudged in seisin of the whole, notwitstanding an adverse seisin thereof. But if the land be in the seisin of several tenants, claiming different parcels thereof in severalty, an entry into the parcel held by one tenant will not give seisin of the parcels held by the other tenants; but there must be an entry into each. Co. Litt. 252 *b*. By parity of reason, an entry into a parcel, which is vacant, will not give seisin of a parcel which is in an adverse seisin. But an entry into the last parcel, in the name of the whole, will inure as an entry *into the vacant parcel. It does not [*251
appear, in the question put by the court below, into which parcel the entry is supposed to be made.

Such are the unanimous opinions of this court, which are to be certified to the circuit court of Kentucky.

CARTER'S heirs *v.* CUTTING and wife. (*a*)

Appellate jurisdiction.

An appeal lies to this court from the sentence of the circuit court of the district of Columbia, affirming the sentence of the orphans' court of Alexandria county, which dismissed a petition to revoke the probate of a will.

THIS was an appeal from the Circuit Court for the district of Columbia.

E. J. Lee, for the appellants: *Taylor*, for the appellees.

March 11th, 1814. STORY, J., delivered the opinion of the court, as follows:—The appellants, who are heirs-at-law of Sally Carter, deceased,

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(*a*) February 19th, 1814. Absent, WASHINGTON, Justice.

petitioned the orphans' court of the county of Alexandria, to revoke and repeal the probate of the will of the said Sally Carter, procured by the respondents, upon the ground, that the said will was admitted to probate, without notice to the appellants, and that the supposed testatrix was an inhabitant of and resident in Virginia, at the time of her death, and left no assets, real or personal, or debts, in the county of Alexandria. The orphans' court, without issuing a summons to the respondents, dismissed the petition, and upon an appeal, this dismissal was confirmed by the circuit court of the district of Columbia.

Two objections have been taken to the sustaining of the appeal to this court: 1. That by the act of congress of 27th February 1801, c. 86, § 12 (2 U. S. Stat. 107), it is enacted, that on appeals from the orphans' *252] *court to the circuit court, the latter "shall therein have all the powers of the chancellor" of the state of Maryland; and by the laws of Maryland, the decree of the chancellor in a like case would be final: 2. That the decree of dismissal is not any final judgment, order or decree of the circuit court, wherein the matter in dispute, exclusive of costs, exceeds $100.

The majority of the court cannot yield assent to the validity of either of these objections. As to the first, we are of opinion, that the conclusiveness of its sentence forms no part of the essence of the powers of the court. Its powers to act are as ample, independent of their final quality, as with it. Besides the act of February 27th, 1801, § 8 (2 U. S. Stat. 106), has expressly allowed an appeal from "all final judgments, orders and decrees of the circuit courts," where the matter in dispute exceeds the limited value, and there is nothing in the context to narrow the ordinary import of the language. We cannot admit that construction to be a sound one, which seeks, by remote inferences, to withdraw a case from the general provisions of a statute, which is clearly within its words and perfectly consistent with its intent. The case of *Young* v. *Bank of Alexandria*, 4 Cranch 384, is, in our judgment, decisive against this objection.

As to the second objection, it is conceded by both parties, that the estate devised to the respondent, Sally C. Cutting, is worth several thousand dollars. If, then, the probate of the will had any legal operation, and was not merely void, the controversy as to the validity of that probate was a matter in dispute equal to the value of the estate devised away from the heirs. It cannot be doubted, that the orphans' court had jurisdiction to allow probate of wills, made by persons in foreign states; and that probate, once allowed, operated as a sentence affirming the validity of such wills between the parties, so far as the *lex loci* could give them operation. It is understood, that a will regularly proved in another state, in strict conformity with the laws of that state, acquires, if it possess the other legal requisites, a binding efficacy in Virginia, so that it may be admitted to record *253] there. The estate devised is understood to be situated *in Virginia, and the title of the heirs thereto would, consequently, be affected by the probate in this district. The probate, then, not being merely void, but affecting the title to lands exceeding $100 in value, is a matter in controversy beyond that value, within the purview of the act of 1801.

The decree of the circuit court dismissing the petition is reversed, and

the cause is to be remanded to that court, with directions to proceed to a hearing upon the merits.

Decree reversed.

The Venus, Rae, Master.

Prize of war.

If a citizen of the United States establishes his domicil in a foreign country, between which and the United States hostilities afterwards break out, any property shipped by such citizen, before knowledge of the war, and captured by an American cruizer, after the declaration of war, must be condemned as lawful prize.[1]

Upon a shipment of goods, to be sold on joint account of the consignee and shipper, or of the latter alone, at the option of the consignee, the right of property does not vest in the consignee, until he has made his election, under the option given him.

If two partners own jointly a commercial house in New York, and one of them obtain an American register for a ship, by swearing that he, together with his partner, of the city of New York, merchant, are the only owners of the vessel for which the register is obtained, when, in fact, his partner is domiciled in England, the vessel is liable to forfeiture, under the act of congress of December 31st, 1792.

Appeal from the sentence of the Circuit Court for the district of Massachusetts. The following were the facts of the case, as stated by Washington, J., in delivering the opinion of the court.

This is the case of a vessel which sailed from Great Britain, with a cargo belonging to the respective claimants, as was contended, before the declaration of war by the United States against Great Britain was or could have been known by the shippers. She sailed from Liverpool, on the 4th of July 1812, under a British license, for the port of New York, and was captured, on the 6th of August 1812, by the American privateer Dolphin, and sent into the district of Massachusetts, where the vessel and cargo were libelled in the district court.

The ship, 100 casks of white lead, 150 crates of earthenware, 35 cases and 3 casks of copper, 9 pieces of cotton bagging, and a quantity of coal, were claimed by Lenox & Maitland. 198 packages of merchandise and 25 pieces of cotton bagging were claimed by Jonathan Amory, as the joint property of James Lenox, William Maitland and Alexander *McGregor; not [*254
distinguishing the proportions of each: but the 25 pieces of cotton bagging were afterwards claimed for McGregor as his sole property, and also 5 trunks of merchandise. 21 trunks of merchandise were claimed by James Magee, of New York, as the joint property of himself and John S. Jones, residing in Great Britain.

The district court, on the preparatory evidence, decreed restitution to Magee & Jones, and also to Lenox & Maitland, except as to the 100 casks of white lead; as to which, and as to the claim of McGregor, further proof was ordered. From this decree, so far as it ordered restitution of the merchandize to Magee & Jones, and to Maitland, and of the ship to Lenox & Maitland, the captors appealed to the circuit court, where the decree was affirmed *pro formâ*, and an appeal was taken to this court.

In April 1813, the cause was heard, on further proof, in the district

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[1] The Frances, *post*, p. 371. See United States *v.* Guillem, 11 How. 60; The William Bagaley, 5 Wall. 408; Miller *v.* United States, 11 Id. 305.