chain of surveys, in order to find the beginning of No. 12; and he would know that such an error in the course would be corrected by such a great natural object, as a creek laid down by the surveyor in the middle of his plat. This would prove, notwithstanding the error in the course, that the lands on both sides of Crow creek were intended to be included in the survey, and intended to be granted by the patent.

It is the opinion of the majority of this court, that there is error in the opinion of the circuit court for the district of East Tennessee in this, that the said court instructed the jury, that the grant, under which the plaintiff claimed, could not be legally run, so as to include Crow creek, instead of directing the jury, that the said grant must be so run as to include Crow creek, and to conform as near as may be to the plat annexed to the said grant; wherefore, it is considered by this court, that the said judgment be reversed and annulled, and the cause be remanded to the said circuit court, that a new trial may be had according to law.

The Chief Justice added, that he did not think the question about the true meridian had much to do with the case. The court decided it upon the plat. If it had not been for the plat, they should have said, that the land ought to be surveyed by the magnetic meridian.

Duvall, J.—My opinion is, that there is no safe rule but to follow the needle, making allowance for variation, according to practical observation.

Judgment reversed.

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*180] *Owens *v.* Hannay. (*a*)

Practice in error.—Transcript.—Alien enemy.

It is not necessary, that the transcript of the record should contain the names of the jurors.

Semble: That if it appear by the record, that the plaintiff below was a subject of Great Britain, and a war break out between Great Britain and the United States, after rendition of the judgment below, and before affirmance on the writ of error, the plaintiff in error cannot take advantage of the fact, that the original plaintiff is an alien enemy; but the judgment may be affirmed.[1]

Error to the Circuit Court for the district of Georgia, in an action of *assumpsit*, upon a special promise to pay interest upon the amount of a decree in chancery, in consideration of forbearance.

The plaintiff below was stated in the declaration to be an alien and British subject, and the defendant a citizen of Georgia. A demurrer to the declaration having been overruled, the defendant pleaded *non assumpsit*, upon which issue, the verdict and judgment were against him, in May 1811, and he brought his writ of error. In the transcript of the record, which came up, a blank was left for the names of the jurors, but in other respects the record appeared to be perfect. The verdict and judgment were fully stated.

War was declared by the United States against Great Britain, on the 18th of June 1812, and continued at the time of the argument in this court.

(*a*) February 8th, 1815. Absent, Livingston, Story and Todd, Justices.

[1] See Buckley *v.* Lyttle, 10 Johns. 117.

Harper, for the plaintiff in error, contended, 1. That as it appeared upon the record, that the plaintiff was an alien enemy, and the defendant had had no opportunity to plead that fact, this court ought not to affirm the judgment; and 2. That the omission of the names of the jurors was fatal, inasmuch as it did not appear from the record, that it was the verdict of a legal jury.

March 1st, 1815. (Absent, Todd, J.) Marshall, Ch. J., stated the opinion of the court to be, that the omission of the names of the jurors was not material. Nothing was said upon the first point.

Judgment affirmed, with costs.

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*The Fanny's Cargo. (*a*) [*181

United States *v.* Cargo of the Ship Fanny, Jennings, Master.

Non-intercourse law.

Under the non-intercourse act of 1809, a vessel from Great Britain had a right to lay off the coast of the United States, to receive instructions from her owners in New York; and if necessary, to drop anchor, and in case of a storm, to make a harbor; and if prevented, by a mutiny, of her crew from puttiug out to sea again, might wait in the waters of the United States for orders.

Appeal from the sentence of the Circuit Court for the district of Connecticut, restoring the property to the claimants.

The American ship Fanny was laden at Greenock, in Scotland, with a cargo of British goods, the property of citizens of the United States, and sailed from thence, on the 4th day of July 1812, after the repeal of the orders in council, and before the war between Great Britain and the United States was known in Greenock. The orders to the master were, to proceed to New York; but unless he was perfectly sure of being allowed an entrance for ship and cargo at New York, he was not to go into the waters of the United States, but to send up a pilot-boat with his letters, so that the consignees might fix upon a port of discharge. The master had no knowledge of the war, until his arrival on the coast, when he received it off Montauk point, from a pilot-boat, who also informed him that several British frigates were off Sandy Hook, capturing American vessels. Whereupon, he dispatched the pilot-boat, with letters for his owners, by the way of New London. Soon afterwards, it became calm, and the ship, drifting too near the shore, he dropped anchor. In the course of the night, it came on to blow a gale, and finding it impossible to lay there, he attempted to get under weigh and stand off, but before he could get up the anchor and make sail, he drifted so far in, that he could not fetch Montauk point, and the pilot informing him that there was good anchorage ground in Fort-pond bay, and that it would not be safe to keep out, he proceeded with the ship to that bay, intending to stand out as soon as the storm abated. Having there cast anchor, and rode out the gale, his crew refused to get under weigh, to go out of the waters of the United States, alleging that they understood he had a British license, and was going to put his ship *under the pro- [*182

(*a*) February 24th, 1815. Absent, Todd, Justice.