of William Weaver alone, of Andrew Byerly, of George I. Brown and William Hollins, of Peter A. Karthous, of William Bayard, Harman Leroy, James McEvers and Isaac Iselm, of William Hood, of Theophilus De Cost, of John Dubany, of Messrs. John B. Fonssatt & Co., of Edward Smith, James Wood and Samuel W. Jones, of Victor Ardaillon, of Lewis Chastant, of Lewis Labat, of Benjamin Rich, of Nath'l Richards, Nayah Taylor and
*289] Gustavus Upson, of *Ferdinand Hurxthal; must be restored on payment of the salvage of one-sixth part of the value. The property embraced in the claims on behalf of Peter Boue, jun., of R. Henry, of P. Doussault, of William Johnston and James Downing, of G. Brousse, must be condemned to the captors. The remaining claims must stand for farther proof. And as to the property unclaimed, it must be condemned as good and lawful prize to the captors.

The decree of the circuit court is to be reformed so as to be in conformity with this decision.

The Brig Ann, McClain, Master. (*a*)

Jurisdiction in case of seizure.

If a seizure, by a collector, for a violation of the revenue laws of the United States be voluntarily abandoned, and the property restored, before the libel or information be filed and allowed, the district court has no jurisdiction of the cause.[1]

Appeal from the sentence of the Circuit Court for the district of Connecticut, which reversed that of the district court, and restored the property to the claimant.

Story, J., delivered the opinion of the court, as follows:—This is an information against twelve casks of merchandise, part of the cargo of the brig Ann, alleged to have been imported, or put on board with an intent to be imported, contrary to the non-importation act of 1st March 1809, ch. 91, § 5.

It appears from the evidence, that the Ann sailed from Liverpool for New York, in July 1812, haqing on board a cargo of British merchandise. She was seized by a revenue-cutter of the United States, on her passage towards New York, while in Long Island sound, about midway between Long Island and Falkland Island, and carried into the port of New Haven, about the 7th of October 1812, and immediately taken possession of by
*290] *the collector of that port, as forfeited to the United States. On the morning of the 12th of October, the collector gave written orders for the release of the brig and cargo from the seizure, in pursuance of directions from the secretary of the treasury, returned the ship's papers to the master, and gave permission for the brig to proceed without delay to New York. Late in the afternoon of the some day, the present information was allowed by the district judge, and on the ensuing day, the brig and cargo were duly taken into possession by the marshal, under the usual monition from the court. On the trial in the district court, the property now in

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(*a*) March 10th, 1815. Absent, Todd, Justice.

[1] The Abby, 1 Mason 360. But a valid seizure confers jurisdiction, notwithstanding an improper removal of the *res* from the marshal's custody. The Rio Grande, 23 Wall. 458.

controversy was condemned ; and upon an appeal, that decree was reversed in the circuit court.

It has been argued, that the decree of the circuit court ought to be affirmed, because, on the whole facts, the district court had no jurisdiction over the cause : and this argument is maintained on two grounds : 1. That the original seizure was made within the judicial district of New York ; and 2. That if the seizure was originally made within the judicial district of Connecticut, the jurisdiction thereby acquired by the district court was, by the subsequent abandonment of the seizure and want of possession, completely ousted.

It is unnecessary to consider the first ground, because we are all of opinion, that sufficient matter is not disclosed in the evidence, to enable the court to decide, whether the seizure was within the district of New York or of Connecticut, or upon waters common to both.

The second ground deserves great consideration. By the judiciary act of the 24th September 1789, ch. 20, § 9, the district courts are vested with "exclusive original cognisance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made on waters navigable from the sea by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas." Whatever might have been the construction of the jurisdiction of the district courts, if the legislature had stopped at the words "admiralty and maritime jurisdiction," it seems manifest, by the subsequent clause, that *the jurisdiction as to revenue forfeitures, was intended to be given to the court of the district, not [*291 where the offence was committed, but where the seizure was made. And this with good reason. In order to institute and perfect proceedings *in rem*, it is necessary that the thing should be actually or constructively within the reach of the court. It is actually within its possession, when it is submitted to the process of the court ; it is constructively so, when, by a seizure, it is held, to ascertain and enforce a right or forfeiture which can alone be decided by a judicial decree *in rem*. If the place of committing the offence had fixed the judicial *forum* where it was to be tried, the law would have been, in numerous cases, evaded ; for, by a removal of the thing from such place, the court could have had no power to enforce its decree. The legislature therefore, wisely determined that the place of seizure should decide as to the proper and competent tribunal.

It follows, from this consideration, that before judicial cognisance can attach upon a forfeiture *in rem*, under the statute, there must be a seizure ; for until seizure, it is impossible to ascertain what is the competent *forum*. And, if so, it must be a good subsisting seizure, at the time when the libel or information is filed and allowed. If a seizure be completely and explicitly abandoned, and the property restored by the voluntary act of the party who has made the seizure, all rights under it are gone. Although judicial jurisdiction once attached, it is divested by the subsequent proceedings ; and it can be revived only by a new seizure. It is, in this respect, like a case of capture, which, although well made, gives no authority to the prize court to proceed to adjudication, if it be voluntarily abandoned, before judicial proceedings are instituted.

It is not meant to assert, that a tortious ouster of possession, or fraudu-

lent rescue, or relinquishment after seizure, will divest the jurisdiction. The case put (and it is precisely the present case) is a voluntary abandonment and release of the property seized, the legal effect of which must, as we think, be to purge away all the prior rights acquired by the seizure. On the whole, it is the opinion of the majority of the court, that the decree of the circuit court ought to be affirmed.

Decree affirmed.

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*292] *Town of Pawlet *v.* Daniel Clark and others. (*a*)

Appellate jurisdiction.—Grant.—Church property.—Pious uses.—Glebe lands.

This court has jurisdiction, where one party claims land under a grant from the state of New Hampshire, and the other under a grant from the state of Vermont, although, at the time of the first grant, Vermont was part of New Hampshire.[1]

A grant of a tract of land, in equal shares, to 63 persons, to be divided amongst them, into 68 equal shares, with a specific appropriation of five shares, conveys only a sixty-eighth part to each person.

If one of the shares be declared to be "for a glebe for the Church of England, as by law established," that share is not holden in trust by the grantees, nor is it a condition annexed to their rights or shares.

The Church of England is not a body corporate, and cannot receive a donation *eo nomine.*

A grant to the church of such a place, is good at common law, and vests the fee in the parson and his successors.

If such a grant be made by the crown, it cannot be resumed by the crown, at its pleasure.

Land, at common law, may be granted to pious uses, before there is a grantee in existence competent to take it, and in the meantime, the fee will be in abeyance.[2]

Such a grant cannot be resumed, at the pleasure of the crown.

The common law, so far as it related to the erection of churches of the Episcopal persuasion of England, the right to present or collate to such churches, and the corporate capacity of the parsons thereof to take in succession, was recognised and adopted in New Hampshire.

It belonged exclusively to the crown, to erect the church, in each town, that should be entitled to take the glebe, and upon such erection, to collate, through the governor, a parson to the benefice.

A voluntary society of Episcopalians, within a town, unauthorized by the crown, could not entitle themselves to the glebe. Where no such church was duly erected by the crown, the glebe remained as an *hæreditas jacens*, and the state, which succeeded to the rights of the crown, might, with the assent of the town, alien or incumber it; or might erect an Episcopal church therein, and collate, either directly or through the vote of the town, indirectly, its parson, who would thereby become seised of the glebe *jure ecclesiæ*, and be a corporation capable of transmitting the inheritance.

By the revolution, the state of Vermont succeeded to all the rights of the crown to the unappropriated, as well as appropriated glebes.

By the statute of Vermont of 30th October 1794, the respective towns became entitled to the property of the glebes therein situated.

A legislative grant cannot be repealed.

No Episcopal church, in Vermont, can be entitled to the glebe, unless it was duly erected by the crown, before the revolution, or by the state, since.

This was a case certified from the Circuit Court for the district of Vermont, in which, upon an action of ejectment, brought by the Town of Pawlet, to recover possession of the glebe lot, as it was called, in that town, the

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(*a*) March 10th, 1815. Absent, Todd, Justice.

[1] Colson *v.* Lewis, 2 Wheat. 377.

[2] Beatty *v.* Kurtz, 2 Pet. 566; Vincennes University *v.* Indiana, 14 How. 269; Ould *v.* Washington Hospital, 95 U. S. 303.