

The Concord.

taken for granted, in the different district and circuit courts of the United States.

March 11th, 1815. (Absent, Todd, J.) LIVINGSTON, J., delivered the opinion of the court, as follows :—The United States claim a priority in payment out of the estate of Hendrickson, in the hands of the defendants Hendrickson, it appears, was one of the sureties of George Bush, late collector at Wilmington, who died on the 2d of February 1797, in debt to the United *States, as appears by a subsequent adjustment of his accounts [*387 at the treasury, in the sum of \$3453.06. By the 5th section of the act of the 3d of March 1797, under which this priority is claimed, it is declared, that where any revenue-officer, or other person, hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, &c., the debt due to the United States shall be first satisfied.

The court is of opinion, that Hendrickson was indebted to the United States, before this act passed, that is, at the time of the death of the collector, although the accounts of the latter were not settled, until after its passage ; and that, therefore, the law which secures a priority against the estates of persons who shall thereafter become indebted, does not apply to this case. The judgment of the circuit court is affirmed.

Judgment affirmed.

The Brig CONCORD, TAYLOR, Master. (a)

Duties on captured goods.

If captured goods, claimed by a neutral owner, be, by consent, sold, under an order of the court, and afterwards, by the final sentence of the court, the proceeds are ordered to be restored to such owner, the amount of the duties due to the United States upon the importation of the goods, must be paid.

THIS was an appeal from the sentence of the Circuit Court, affirming that of the district court, which restored to the claimants, neutral Spanish merchants, at Teneriffe, twenty pipes of wine, part of the cargo of the British brig Concord, captured by the American privateer Marengo, in August 1812, without payment of duties ; although the same had been, by consent of the proctors for the parties, sold, under an order of the court. The cause being submitted, without argument—

STORY, J., delivered the opinion of the court, as follows :—This is the case of a shipment made by a neutral house, on board of a British ship, which was captured, on a voyage from Teneriffe to London, by the private armed ship Marengo, and brought into the port of New *York for [*388 adjudication. Pending the prize proceedings, the goods were sold by an interlocutory order of the district court, and the proceeds brought into the registry. Upon the hearing, the property was decreed to be restored to the claimants, without payment of duties ; and this decree was afterwards affirmed in the circuit court. The cause has been brought, by appeal, to this court, for a final decision.

We are all of opinion, that the proprietary interest of the claimants is

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completely proved; and therefore, the decree of restoration must be affirmed.

With respect to the duties, we are all of opinion, that the decree of the courts below was erroneous. Where goods are brought by superior force, or by inevitable necessity, into the United States, they are not deemed to be so imported, in the sense of the law, as necessarily to attach the right to duties. If, however, such goods are afterwards sold, or consumed, in the country, or incorporated into the general mass of its property, they become retroactively liable to the payment of duties. In the present case, if the goods had been specifically restored, and afterwards withdrawn from the United States by the claimants, they would have been exempt from duties. But having been sold, by order of the court, for the general benefit, the duties indissolubly attached, and ought to have been deducted from the proceeds, by the courts below. The decree in this respect must be reversed.

Decree reversed.

The NEREIDE, BENNETT, Master. (a)

Neutral property.

The stipulation in a treaty, "that free ships shall make free goods," does not imply the converse proposition, that "enemy ships shall make enemy goods."¹

The treaty with Spain does not contain, either expressly or by implication, a stipulation that enemy ships shall make enemy goods.

The principle of retaliation or reciprocity, is no rule of decision in the judicial tribunals of the United States.

A neutral may lawfully employ an armed belligerent vessel, to transport his goods; and such goods do not lose their neutral character, by the armament, nor by the resistance made by such vessel, provided the neutral do not aid in such armament or resistance, although he charter the whole vessel, and be on board at the time of the resistance.²

THIS was an appeal by Manuel Pinto, from the sentence of the Circuit Court for the district of New York, affirming *pro forma* the sentence of the district court, which condemned that part of the cargo which was claimed by him. The facts of the case are thus stated by the Chief Justice, in delivering the opinion of the court :

*389] *Manuel Pinto, a native of Buenos Ayres, being in London, on the 26th of August 1813, entered into a contract with John Drinkald, owner of the ship Nereide, whereof William Bennett was master, whereby the said Drinkald let to the said Pinto, the said vessel to freight, for a voyage to Buenos Ayres and back again to London, on the conditions mentioned in the charter-party. The owner covenanted that the said vessel, being in all respects seaworthy, well manned, victualled, equipped, provided, and furnished with all things needful for such a vessel, should take on board a cargo to be provided for her, that the master should sign the customary bills of lading, and that the said ship, being laden and dispatched, should join and sail with the first convoy that should depart from Great Britain for Buenos Ayres : that on his arrival, the master should give notice thereof to the agents or assigns of the said freighter, and make delivery of the cargo, according to bills of lading ; and that the said ship, being in all respects

(a) March 6th, 1815. Absent, TODD, Justice.

¹ The Cygnet, 2 Dods. 299.

² The Atalanta, 3 Wheat. 409; 5 Id. 433.