and explain the act of November 1777; the 5th section of which expressly forbids the entering or surveying any lands within the Indian hunting-grounds, recognises the western boundary as fixed by the above-mentioned treaty, and declares void all entries and surveys which have been, or shall thereafter be made within the Indian boundary.

It is objected, that the act of April 1778, so far as it relates to entries made before its passage, is unconstitutional and void. If the reasoning in the previous part of this opinion be correct, that objection is not well founded. That reasoning is founded upon the act of 1777, and the history and situation of the country at that time. The act of 1778, is referred to, as a legislative declaration, explaining and amending the act of 1777. It is
*124] argued, that there is no recital in the act of 1778, declaring, that the act of 1777 had been misconstrued *or mistaken by the citizens of the state; or that entries had been made on lands, contrary to the meaning and intention of that act; and that the 5th section is an exercise of legislative will, declaring null and void rights which had been acquired under a previous law. Although the legislature may not have made the recital and declaration in the precise terms mentioned, nor used the most appropriate expressions to communicate their meaning, yet it will be seen, by a careful perusal of the act, that they profess to explain, as well as to amend, the act of 1777.

Upon a full review of all the acts of the legislature of North Carolina, respecting the manner of appropriating their vacant lands, and construing them *in pari materia*, there is a uniform intention manifested, to prohibit and restrict entries from being made on lands included within the Indian boundaries. Therefore, this court unanimously affirms the decision of the circuit court, with costs.

Judgment affirmed.

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*125] *The Astrea.

Prize.—Re-capture.

An enemy's vessel was captured by a privateer, re-captured by another enemy's vessel, and again re-captured by another privateer, and brought in for adjudication. It was held, that the prize vested in the last captor; an interest acquired in war, by possession, is divested by the loss of possession.

Appeal from the Circuit Court for the district of Georgia. This was an enemy's vessel, captured by the privateer Ultor, in sight of Surinam, on the 17th of May 1813; and on the 13th of June 1813, re-captured by an enemy's vessel of war, about two leagues from the coast of Georgia, and on the same day, re-captured by the privateer Midas, and brought into the port of Savannah, for adjudication. The prize was adjudged to the last captors, by the decree of the court below, from which the first captors appealed to this court.

Charlton, for the appellants, contended, that the prize interest vested in the first captors. He argued, that the opinions of eminent civilians, and the practice of the continental nations of Europe, ought to prevail, rather than the decisions of the British courts of prize; which last are founded on
*126] reasons of commercial and naval policy, peculiar to England. Sir William Scott himself admitted, that there is no *general rule. *The*

Santa Cruz, 1 Rob. 50, but adopted the rule of condemnation, as most convenient for his own country; because, by protracting the period for the divesture of British interests, it places the property of British subjects upon a better and more secure footing than the rule adopted by any other nation. It gives a wider range to the *jus postliminii*, and enlarges the probability of re-capture; a probability, which is converted almost into a certainty, by the maritime strength of Great Britain. Other nations, not having the same means of giving protection and security to captors, have adopted rules requiring a less firm and shorter possession, in order to divest the property. These rules are, 1st. That of immediate possession. 2d. That of pernoctation and twenty-four hours' possession. 3. The bringing *infra præsidia*. Wheaton on Captures, c. 8, §§ 14, 15, 17, 18. The first is held sufficient by Azuni (2 Azuni 236), and though his own opinion is entitled to but little weight, it deserves consideration how far he is supported by authorities. It is the maxim of the civil law, that things taken from the enemy immediately become the property of the captors. *Quæ ex hostibus capientur statim capientium fiunt.* Grotius and Vattel are guilty of great inconsistencies in expounding the rule in question. Burlamaqui is clear and explicit, that mere possession immediately vests a title. Burlam. Nat. and Pol. Law, 222. Bynkershoek does not require a sentence of condemnation; *and he enumerates "fleets" among the *præsidia*, under the protec- [*127 tion of which the thing taken may be considered as safe (Bynk. Q. J. Pub. c. 3, p. 29, of Du Ponceau's translation); so that a bringing into the territorial limits is not indispensable, because the fleet into which the captor brings his prize may be remote from the coasts of his country. It results, then, that the loss of the *spes recuperandi* is the true foundation of the rule established by jurists: it is this which consummates the title of the captors, and destroys the *jus postliminii* of the law of nations; it is the municipal code of England alone which requires a sentence of condemnation to perfect the title.

2. But, supposing the *jus postliminii* still to continue, it is a right to be asserted by the subjects of the state from whom the property has been captured. But is it competent for one citizen of the belligerent state to divest another of the incipient inchoate title he had acquired by the first capture? The re-capture by the enemy might, indeed, enable the original owner to reclaim his property; if a sentence of condemnation be necessary, it might affect the title of a neutral purchaser; but the *jus postliminii* can have no operation as between the first and second captor.

Harper, contrà, was stopped by the court.

March 4th, 1816. MARSHALL, Ch. J.—An interest acquired by possession, is divested by the loss of possession, from the very nature of a title acquired in war. The law of *our own country, as to salvage, settles the question, and the case of *The Adventure*, 8 Cr. 221,(*a*) is directly [*128 in point and conclusive.

Sentence of the circuit court affirmed.

(*a*) This was the case of a British ship, captured by two French frigates, and, after a part of the cargo was taken out, presented to the libellants in the cause, citizens of the United States (then neutral), whose vessel the frigates had before taken and burnt;

by whom she was navigated into a port of this country, and pending the suit instituted by them, war was declared between the United States and Great Britain. A question arose, whether this was a case of salvage? Mr. Justice JOHNSON, by whom the opinion of the court was delivered, stated, that "the fact of the gift was established by a writing under the hand of the commander of the squadron of frigates, in these words, *Je donne au capitaine*, &c., in the language of an unqualified donation, *inter vivos*. In this case, the most natural mode of acquiring a definite idea of the rights of the parties in the subject-matter, will be, to follow it through the successive changes of circumstances, by which the nature and extent of those rights were affected—the capture, the donation, the arrival in the neutral country, and the subsequent state of war. As between belligerents, capture, undoubtedly, produces a complete divesture of property. Nothing remains to the original proprietor but a mere *scintilla juris*, the *spes recuperandi*. The modern and enlightened practice of nations has subjected all such captures to the scrutiny of judicial tribunals, as the only practical means of furnishing documentary evidence to accompany vessels that have been captured, for the purpose of proving that the seizure was the act of sovereign authority, and not of mere individual outrage. In the case of a purchase made by a neutral, Great Britain demands the production of such documentary evidence, issuing from a court of competent authority, or will dispossess the purchaser of a ship originally British. *The Flad Oyen*, 1 Rob. 135. Upon the donation, therefore, whatever right might, in the abstract, have existed in the captor, the donee could acquire no more than what was consistent with his neutral character to take. He could be in no better situation than a prize-master, navigating the prize, in pursuance of orders from his commander. *The vessel remained
*129] liable to British re-capture, on the whole voyage: and on her arrival in a neutral territory, the donee sunk into a mere bailee for the British claimant, with those rights over the thing in possession which the municipal law (civil and common) gives for care and labor bestowed upon it. The question then recurs, is this a case of salvage? On the negative of the proposition, it was contended, that it is a case of forfeiture, under the municipal law, and therefore, not a case of salvage, as against the United States; that it was an unneutral act to assist the French belligerent in bringing the vessel *infra præsidia*, or into any situation where the rights of capture would cease; and therefore, not a case of salvage, as against the British claimant. But the court entertains an opinion unfavorable to both those objections. This could not have been a case within the view of the legislature, when passing the non-importation act of March 1809. The ship was the plank on which the shipwrecked mariners reached the shore; but to have cast into the sea the cargo, the property of a belligerent, would have been to do him an injury, by taking away the chance of recovery, subject to which they took it into their possession. Besides, bringing it into the United States, does not necessarily presuppose a violation of the non-importation laws. If it came within the description of property cast casually on our shores, as the court is of opinion it did, legal provision existed for disposing of it, in such a manner as would comport with the policy of those laws. At last, they could but deliver it up to the hands of the government, to be re-shipped by the British claimants, or otherwise appropriated under the sanction of judicial process. And such was the course that they pursued. Far from attempting any violation of the laws of the country, upon their arrival, they delivered it up to the custody of the laws, and left it to be disposed of under judicial authority. The case has no feature of illegal importation, and cannot possibly have imputed to it the violation of municipal law. As to the question arising on the interest of the British claimants, it will, at this time (war having supervened), be a sufficient answer, that they who have no rights in this court cannot urge a violation of their rights against the libellants. But there is still a much more satisfactory answer. To have attempted to carry the vessel *infra præsidia* of the enemy, would, unless it could have been excused, on the ground of necessity, have been an unneutral act. But where every exertion is made to bring it into a place of safety, in which the original right of the captured would be revived, and might be asserted, instead of aiding his enemy, it is doing
*130] an act exclusively resulting to the benefit of the British claimant." A salvage *of

Matson *v.* Hord.

Land-law of Kentucky.

The law of Kentucky requires, in the location of warrants for land, some general description, designating the place where the particular object is to be found, and a description of the particular object itself.

The general description must be such as will enable a person intending to locate the adjacent *residuum*, and using reasonable care and diligence, to find the object mentioned in that particular place, and avoid the land already located; if the description will fit another place better, or equally well, it is defective.

"The Hunter's trace, leading from Bryant's station over to the waters of Hinkston, on the dividing ridge between the waters of Hinkston and the waters of Elkhorn," is a defective description, and will not sustain the entry.

Appeal from a decree in chancery in the Circuit Court of Kentucky. This cause was argued by *Hughes* and *Talbot*, for the appellants, and *Hardin*, for the respondents. It was, principally, a question of fact, arising under the local laws of real property in Kentucky, for an outline of which the general reader is referred to the Appendix, note 1, where *will be found an exposition of the elementary principles applicable to this class of causes. [*131

March 5th, 1816. Marshall, Ch. J., delivered the opinion of the court, as follows:—This is an appeal from a decree of the circuit court of Kentucky, by which the plaintiff's bill was dismissed. The object of the suit is to enjoin the proceedings of the defendant at law, and to obtain from him a conveyance for so much of the land contained in his patent, as interferes with the entry and survey made by the plaintiff.

The plaintiff claims by virtue of an entry, made on the 17th of January 1784, the material part of which is set forth in the bill in these words: "Richard Masterson enters 22,277 and a half acres of land, on treasury warrant No. 19,455, to be laid off in a parallelogram, twice as long as wide, to include a mulberry tree marked thus, 'F,' and two hickories, with four chops in each, to include the said three marked trees, near the centre thereof; the said trees standing near the Hunter's trace, leading from Bryant's station over to the waters of Hinkston, on the dividing ridge between the waters of Hinkston and the waters of Elkhorn." This entry has been surveyed, he states, according to location, and that part of it which covers the land in controversy has been assigned to him. The validity of this entry constitutes the most essential point in the present controversy. If it cannot be sustained, there is an end to the plaintiff's title; *if it can, other points arise in the case, which must be decided. [*132

This question depends on the construction of that clause in the land-law which requires that warrants shall be located so specially and precisely, as that others may be enabled, with certainty, to locate other warrants on the adjacent *residuum*. In the construction of an act so interesting to the peo-

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one-half was allowed by the court, and as to the residue, it was determined, that it must stand on the same footing with other property found within the territory at the declaration of war, and might be claimed, upon the termination of war, unless previously confiscated by the sovereign power. The court, therefore, made such order respecting it, as would preserve it, subject to the will of the court, to be disposed of as future circumstances might render proper.