

Ross v. Triplett.

the deputy-surveyor, was, in point of law, to be considered as made by the principal, and consequently, that his signature to the plat and certificate was a sufficient authentication of the survey, to entitle the person claiming under it to a grant.

As to the distinction taken at the bar between that case and this, upon the ground that in this, the survey was merely experimental, and was not intended to be made in execution of the warrant, there is certainly *nothing* in it. It is, by acts, that the intention of men, in the absence of positive declarations, can best be discovered. The survey made by Taylor was adopted by the principal surveyor, as one actually done in execution of the warrant to Sutherland, and it would be too much for this, or any other, court to presume, that a contrary intention prevailed in the mind either of the principal or deputy-surveyor, and on that supposition to pronounce the survey invalid.

The last objection made to this decree is, that as a British subject, William Sutherland could not make a legal title to this land, under the state of Virginia, and consequently, that the grant to him in 1788 was void, and was not protected by the treaty of 1794, between the United States and Great Britain. The decision of this court in the case of *Fairfax's devisee v. Hunter's lessee* (7 Cranch 603), affords a full answer to this objection. In that case, the will of Lord Fairfax took effect in the year 1781, during the war, and Denny Martin, the devisee under that will, was found to be a native-born British subject, who had never become a citizen of any of the United States, but had always resided in England. It was ruled in that case, 1st. That although the devisee was an alien enemy, at the time of the testator's death, yet he took an estate in fee, under the will, which could not, on the ground of alienage, be divested, but by inquest of office, or by some legislative act equivalent thereto. 2d. That the defeasible title thus vested in the alien devisee was completely *protected and confirmed by the ninth* article of the treaty of 1794. These principles are decisive of the objection now under consideration. In that case, as in this, the legal title vested in the alien, by purchase, during the war, and was not divested by any act of Virginia, prior to the treaty of 1794, which rendered their estates absolute and indefeasible.

Decree affirmed, with costs.

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Certificate of division.

This court has no jurisdiction of causes brought before it, upon a certificate of a division of opinion of the judges of the circuit court of the district of Columbia. The appellate jurisdiction of this court, in respect to that court, only extends to the final judgments and decrees of the latter.

THIS cause was brought from the Circuit Court for the district of Columbia, upon a certificate that the opinions of the judges of that court were divided upon a question which occurred in the cause, under the judiciary act of 1802, ch. 291, § 6. It was submitted without argument.

March 12th, 1818. It was ordered to be certified to the circuit court for the district of Columbia, as follows :

The Neptune.

*CERTIFICATE.—This cause came on to be heard on the transcript of the record of the circuit court for the district of Columbia, and on the question certified, on which the judges of that court were divided, and was argued by counsel. On consideration whereof, this court is of opinion, that its jurisdiction extends only to the final judgments and decrees of the said circuit court. It is, therefore, considered by this court, that the cause be remanded to the said circuit court for the district of Columbia, to be proceeded in according to law.

The NEPTUNE : HARROD *et al.*, Claimants.

Ships' registers.

Libel under the 27th section of the registry act of 1792, ch. 146, for the fraudulent use by a vessel of a certificate of registry, to the benefit of which she was not entitled. Vessels forfeited. The provisions of the 27th section apply as well to vessels which have not been previously registered, as to those to which registers have been previously granted.

APPEAL from the District Court of Louisiana.

February 26th, 1818. This cause was argued by *D. B. Ogden* and *C. J. Ingersoll*, for the appellants and claimants, and by the *Attorney-General*, for the United States.

*DUVALL, Justice, delivered the opinion of the court.—The ship Neptune, owned and commanded by Captain Myrick, arrived at New Orleans, from London, on the 20th of October 1815. On the next day, he appeared, in company with George M. Ogden, one of the appellants, at the custom-house, and reported the Neptune, as a registered vessel of the United States, belonging to Wilmington, North Carolina, where, he alleged, and it was so stated in the manifest, she was registered. He declared, at the same time, that he had lost the register, in ascending the Mississippi, and required a new one to be issued in lieu of it. Captain Myrick had made a protest before a notary-public to that effect, and offered to take the oath required by the 13th section of the act, entitled “an act concerning the registering and recording of ships or vessels,” but was taken sick, and in a few days afterwards, died, without taking it. [*602]

George M. Ogden, administered on the estate of Captain Myrick, and on the 22d of November, the court of probates ordered a sale of the effects of the intestate, which was made on the 5th of December following, at which sale, Messrs. Harrod & Ogdens became the purchasers of the Neptune, for \$7500.

On the 12th of January 1816, Messrs. Harrod & Ogdens addressed a letter to the collector, requesting to be informed, whether a register could be granted for the ship Neptune, on the owners taking the oath prescribed by law. The collector replied, by letter dated the 20th, that a register had been refused the ship Neptune, on the ground, that the oath offered to *show the loss of a former register was insufficient, inasmuch as it contained an assertion that the register lost was granted at the port of Wilmington, in North Carolina, and by a letter from the collector of that port, information had been received, that no such register was ever issued from his [*603]