

EVANS v. PHILLIPS.

Error.

A writ of error will not lie on a judgment of nonsuit.

ERROR to the Circuit Court of New York.

D. B. Ogden moved to dismiss the writ of error in this case, upon the ground, that the plaintiff had submitted to a nonsuit in the court below, upon which no writ of error will lie.

THE COURT directed the writ of error to be dismissed.

*JUDGMENT.—This cause came on to be heard, on the transcript
*74] of the record; on consideration whereof, it is adjudged and ordered, that the writ of error be, and the same is, hereby dismissed, with costs, the plaintiff having submitted to a nonsuit in the circuit court. (a)

VAN NESS v. BUEL.

Rights of seizing officer.

A collector of the customs, who makes a seizure of goods for an asserted forfeiture, and before the proceedings *in rem* are consummated by a sentence of condemnation, is removed from office, acquires an inchoate right, by the seizure, which, by the subsequent decree of condemnation, gives him an absolute vested right to his share of the forfeiture, under the collection act of the 2d of March 1799.¹

ERROR to the Circuit Court of Vermont. This was an action of *assumpsit*, in which the defendant in error, Buel, declared against the plaintiff in error, Van Ness, on the money counts, and gave evidence that the sums of money, for the recovery of which this suit was brought, were the proceeds of a moiety of a certain seizure of goods, as forfeited, which seizure was made in the district of Vermont, on the 6th day of July 1812, while the plaintiff below
*75] was collector of the *customs for said district, &c., which goods were libelled, in September, 1812, in the district court, and condemned at the October term of the circuit court, 1813. That the plaintiff below was appointed collector on the 16th of March 1811, and remained in office until the 15th of February 1813, when he was removed from office by the president, and the defendant below appointed to the same office; and received the proceeds of the goods condemned. That various other parcels of goods were seized and libelled, while the plaintiff below was collector, but were condemned after his removal from office, and the proceeds received by the defendant below.

The court below charged the jury, that the defendant in error was entitled to recover a moiety of the seizures so made by him, during his continuance in office, and condemned after his removal. The jury found a verdict, and judgment was rendered for the plaintiff below; and a bill of exceptions having been taken to the charge of the court below, the cause was brought by writ of error to this court. The cause was submitted, without argument.

(a) See *Box v. Bennett*, 1 H. Bl. 432; *Kempland v. Macauley*, 4 T. R. 436.

¹ *Buel v. Van Ness*, 8 Wheat. 313.