

tion a usurpation of power by a State, to regulate and control the rights of the United States. In the language of the act of 1789, it could not be *a case where the laws of the State could apply.* The mischiefs, too, of such a construction, would be very great. The public rights, revenue, and property, would be subject to the arbitrary limitations of the States; and the limitations are so various in these States, that the government would hold its rights by a different tenure in each." *Id.* p. 315.

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[CONSTRUCTION OF STATUTE.]

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Collusive captures and violations of the revenue laws, committed by a private armed vessel, are a breach of the condition of the bond given by the owners, under the Prize Act of June 26, 1812, c. 430. s. 3. If such breach appear upon demurrer, the defendants are not entitled to a hearing in equity under the Judiciary Act of 1789, c. 20. s. 26.

THIS cause came before the Court upon a certificate of a division of opinion between the Judges of the Circuit Court of Maine. It was an action of debt, originally brought in the District Court of Maine, by the United States, against the defendants in that Court, Greeley and others, upon a bond executed by them on the 17th of December, 1813, under the Prize Act of June 26th, 1812, c. 430. s. 3. as owners of the private armed vessel called the Fly, conditioned, that " the owners, officers, and crew of the said armed vessel, shall observe the laws and treaties of the Uni-

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ted States, and the instructions which shall be given according to law for the regulation of their conduct, and satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof, by such vessel, during her commission, and deliver up the same when revoked by the President of the United States." The defendants pleaded a performance of this condition; to which the District Attorney replied, that on the 15th day of December, 1813, at a place called St. Johns, the same being a colony and dependency of Great Britain, certain goods, &c. the same being of the growth, produce, and manufacture of Great Britain, or some colony or dependency thereof, the importation whereof into the said States, then and for a long time afterwards, and at the time of bringing the same into the said District of Maine, was, by law, prohibited, were put on board a certain vessel or schooner called the George, with the intention to import the same into the said States, contrary to the true intent and meaning of the statute in such case made and provided, and with the knowledge of the master of the said schooner George; and, afterwards, in pursuance of said intention, the said schooner did depart from the said place of lading, to wit, St. Johns, and there, afterwards, on the high seas, by way of collusion, and with intent to evade the statute aforesaid, and under colour of capture by the private armed vessel called the Fly, aforesaid, to import the said goods, &c. into the said States, contrary to the true intent and meaning of the statute aforesaid, the said schooner George, so

laden as aforesaid, was taken possession of by the said Dekoven, by and with the said private armed vessel called the Fly, whereof the said Dekoven then and there was master as aforesaid, on the high seas, and, afterwards, on the 24th day of January, 1814, the said schooner George, and the goods, &c. aforesaid, were brought into the port of Ellsworth, in the said District of Maine, and the goods, &c. were then and there, under colour of capture, by said Dekoven, his officers and crew, in and with said schooner Fly, imported, in manner aforesaid, into the said States, contrary to the true intent and meaning of the statute aforesaid. Other pleadings followed, (which it is not necessary to state,) ending with a demurrer, upon which the District Court was of opinion, that the plaintiffs were entitled to judgment. The defendants, thereupon, moved for a hearing in Chancery upon the making up of the judgment on the bond declared on, which motion was denied, and judgment rendered for the United States. The cause was then brought by writ of error to the Circuit Court, the Judges of which were divided in opinion upon the following questions, which were, thereupon, certified to this Court.

1. Whether an American private armed vessel, duly commissioned, making collusive captures of enemy's property during the late war with Great Britain, and under colour of such capture, introducing goods and merchandise into the United States, contrary to the provisions of the act of March 1, 1809, c. 195. revived and continued in force by the act of March 2, 1811, c. 306. thereby

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broke the condition of the bond given pursuant to the third section of the statute of June 26, 1812, c. 430. requiring, "that the owners, officers, and crew, who shall be employed on board such commissioned vessel, shall and will observe the treaties and laws of the United States?"

2. Whether, if such proceeding on the part of such private armed vessel, be a breach of the condition of said bond, and such breach appear upon demurrer, the defendants can by law claim a hearing in Chancery, under the Judiciary Act of September 24, 1789, c. 20. s. 26.?

Feb. 14th. The cause was briefly argued by Mr. Webster, for the plaintiffs in error, and by Mr. Pitman, for the United States.

The Court directed the following certificate to be sent to the Circuit Court.

CERTIFICATE. This cause came on to be heard on the transcript of the record of the Court of the United States, for the first circuit in the District of Maine, on the points on which the Judges of that Court were divided in opinion, and was argued by counsel. On consideration whereof, this Court is of opinion :

1. That an American private armed vessel, duly commissioned, making collusive captures of enemy's property during the late war with Great Britain, and under colour of such captures introducing goods and merchandise into the United States, contrary to the provisions of the act of March 1, 1809, c. 195. revived and continued in

force by the act of March 2, 1811, c. 306. thereby broke the condition of the bond given pursuant to the third section of the statute of June 26th, 1812, c. 430. requiring " that the owners, officers, and crew, who shall be employed on board such commissioned vessel, shall and will observe the treaties and laws of the United States.

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2. That where such breach appears upon demurrer, the defendants cannot, by law, claim a hearing under the Judiciary Act of September 24th, 1789, c. 20. s. 26.

All which is directed to be certified to the Circuit Court of the United States for the first circuit and District of Maine.

[PRIZE.]

The EXPERIMENT.

In cases of collusive capture, papers found on board one captured vessel may be invoked into the case of another captured on the same cruise.

A commission obtained by fraudulent misrepresentations, will not vest the interests of prize.

But a collusive capture made under a commission, is not, *per se*, evidence that the commission was fraudulently obtained.

A collusive capture vests no title in the captors, not because the commission is thereby made void, but because the captors thereby forfeit all title to the prize property.

APPEAL from the decree of the Circuit Court of Massachusetts, affirming the decree of the District Court of Maine, by which the sloop Experiment, and cargo, were condemned to the United States, as having been collusively captured by