with regard to rights accruing during that time, the legislature declares, that as the modification imposed upon the grant to the informer, or seizing officer, by virtue of that dispensing power, did not then exist, their proportions should not afterwards be subjected to it, but the court may assess their proportions in a summary manner. There cannot be a more explicit declaration of legislative understanding than this clause presents, inasmuch as it makes no discrimination *between the cases of judgment and other cases, but considers the right accruing to them, the same before judgment, as it is after. [*305

There is one peculiarity in this case, which, in my opinion, precludes the possibility of recovery, independently of the general principle; which is, that this action is brought against the marshal, for not executing process issuing from another state. It certainly presents a dilemma from which I think it impossible for the party plantiff to escape. The right to issue such process originates in the 6th section of the "act more effectually to provide for the settlement of accounts between the United States and receivers of public money," by the words of which the power is explicitly confined to the executions on judgments obtained for the use of the United States. The real plaintiff here, then, is reduced to this alternative: Either the judgment was for his use, or it was not. If not for his use, then he cannot be damnified by the defendant, in refusing to execute it. But if for his use, it cannot be for the use of the United States, and then the execution issued wrongfully, and was rightfully disobeyed. If it be replied, that the judgment, in the first place, was obtained for the use of the United States, it only brings us back to what I before observed, that so entirely is this true, as to raise no vested right in any one, on the solitary ground of an eventual contingent interest.

Judgment affirmed.

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*The Dos Hermanos: Shields, Claimant. [*306

Prize.—Salvage.—Appeal.

Seizures made *jure belli* by non-commissioned captors, are made for the government, and no title of prize can be derived but from the prize acts.

A non-commissioned captor can only proceed in the prize court as for salvage, the amount of which is discretionary.

An appellate court will not interfere in the exercise of this discretion, as to the amount of salvage allowed, unless in a very clear case of mistake.

An appeal under the judiciary acts of 1789, § 22, and of 1803, prayed for and allowed, within five years, is valid, although the security was not given until after the lapse of five years.

The mode of taking the security, and the time perfecting it, are within the discretion of the court below, and this court will not interfere with the exercise of that discretion.

Appeal from the District Court of Louisiana. This was the same case reported 2 Wheat. 76, where the decree of the court below condemning the cargo as enemy's property, was affirmed by this court, reserving the question as to the distribution of the prize proceeds. The original capture was made by Mr. Shields, a purser of the navy, in the year 1814, in a barge armed and fitted out to cruise, but not regularly attached to the navy. The cause was remanded to the court below for further proceedings, and that court decreed the proceeds to be equally distributed between the United States and

the captors *without deducting the captors' expenses. From this decree, the captors appealed to this court.

March 5th. *C. J. Ingersoll*, for the appellants, stated, that it had been generally considered by the text-writers, and courts of prize, that the right to captures, *jure belli*, was in the government, and that no individual could derive any rights of prize but from the express grant of the government. 2 Wheat. app'x, note 1, p. 71. But, on principle, every individual is in a state of war with the enemies of his country; and the common law certainly considers the law of nations as authorizing any subject of the belligerent state to seize enemy's property within the realm, or the property of other subjects previously captured by the enemy, to the exclusion of the king, the admiral, and the owner, unless the latter came the same day they were taken, and claimed them *ante occasum solis*. 2 Reeves' Hist. Eng. Law, 171–2. To the same effect is the case in Year Book 7 Edw. IV. 14.

The principle is, that personal effects, seized in war, are acquired to the taker, by occupancy; and immovables, such as cities, lands, &c., to the public. Wood's Inst. Imp. Law, b. 2, c. 3, p. 154. But the crown, always rapacious, and seeking to extend its final prerogative, subsequently introduced the doctrine of public title to personal things taken in war. Thus, the statute
*308] *34 Edw. III., c. 1, declares, that the crown was always seised of the forfeitures of war; and hence came the doctrine of the *droits* of admiralty. 1 Ruff. 302; 2 Reeves 454. It does not appear, that this assumption has ever been expressly recognised by this court, as a part of the law of this country; and, unquestionably, a non-commissioned captor may seize enemy's property (2 Wheat. app'x, note 1, p. 7), and after a condemnation, as in this case, it must be adjudged to the captors. It is now too late for the government to interpose its claim. The act of the 23d April 1800, c. 189, § 5, and the prize act of 1812, c. 430, give the proceeds of vessels and goods, adjudged good prize, to the captors. But at all events, the captors are entitled to be repaid their expenses, and to a liberal salvage. *The San Bernardo*, 1 Rob. 178; *The Haase*, Ibid. 240.

The *Attorney-General*, contrà, argued, that it was established as an elementary principle in the law of prize, that all captures *jure belli*, inured to the public, and that the actual captors could only derive their title from the grant of the government. This was the case with commissioned captors, and still more emphatically as to non-commissioned captors; who, though they had a right to seize enemy's property, could claim no title to the proceeds upon adjudication, except what was derived from the bounty of the public. 2 Wheat. app'x, note 1, p. 7, 71. Whatever might have been the
*309] ancient *common-law doctrine, in England, it had been long since settled in that country, that all rights of prize were derived from the grant of the crown. Without entering into all the distinctions as to the capacity in which the crown took, whether in the king's office of admiral, or *jure coronæ*, it might be laid down as a general proposition, that non-commissioned captors, as a matter of strict right, were not entitled to any share of the prizes captured by them. Captures made by tenders or boats, sent out by officers of the navy, but not regularly attached by public authority to the navy, are condemned as *droits* of admiralty. *The Melomane*, 5 Rob. 41; *The Charlotte*, Ibid. 280, and note. But in these, and all other cases of seiz-

ures by non-commissioned captors, it was usual to reward the takers with a liberal share of the property, in the discretion of the court of admiralty. *The San Bernardo*, 1 Rob. 178; *The Haase*, Ibid. 286; *The Amor Parentum*, Ibid. 303. There was no reason why any different principle or mode of proceeding should be adopted in this country. It does not depend upon any peculiar municipal regulations, but grows out of a principle recognised by all the writers on public law: *Bello parta cedunt reipublicæ*. *The Elsebe*, 5 Rob. 173, 181. In the present case, a moiety of the proceeds had been allowed to the actual captors as salvage; but the provisions in the prize act for the distribution of prizes, were confined to commissioned public and private armed vessels.

*March 7th, 1825. MARSHALL, Ch. J., delivered the opinion of the court, that whatever might have been the ancient doctrine in [*310 England, in respect to captures in war, it is now clearly established in that kingdom, that all captures *jure belli*, are made for the government, and that no title of prize can be acquired but by the public acts of the government conferring rights on the captors. If the original law of England authorized an individual to acquire to his own use, the property of a belligerent, without any express authority from the public, that law was changed, long before the settlement of this country. It never was the law of this country. Before the revolution, all captures from the enemy accrued to the government, to be distributed according to law; and the revolution could not strip the government of this exclusive prerogative, and vest it in individuals. It is, then, the settled law of the United States, that all captures made by non-commissioned captors, are made for the government; and since the provisions in the prize acts, as to the distribution of prize proceeds, are confined to public and private armed vessels, cruising under a regular commission, the only claim which can be sustained by the captors, in cases like the present, must be in the nature of salvage for bringing in and preserving the property.

In the present case, the district court have awarded one-half of the prize proceeds, as salvage, to the captors. It was an exercise of sound discretion; and this court would, with extreme reluctance, interfere with that discretion, unless *in a very clear case of mistake. We perceive no such mis- [*311 take in this case, and are well satisfied with the amount of the salvage as decreed by the district court.

As to the question which has been made, whether the appeal was in due time, it appears, that the appeal was prayed for within five years, and was actually allowed by the court, within that period. It is true, that the security required by law was not given, until after the lapse of the five years; and under such circumstances, the court might have disallowed the appeal, and refused the security. But as the court accepted it, it must be considered as a sufficient compliance with the order of the court, and that it had relation back to the time of the allowance of the appeal. The mode of taking the security, and the time for perfecting it, are matters of discretion, to be regulated by the court granting the appeal; and when its order is complied with, the whole has relation back to the time when the appeal was prayed. We must presume, the security was given, in this case, according to the rule prescribed by the district court, and the appeal was, therefore, in time.

Decree affirmed, with costs.