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was tolerated as legal, it would be easy by collusion to subvert the neutrality of the United States, and involve the country in a war.

THE COURT, however, without hearing the opposite counsel, directed—
The decree to be affirmed.

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Error to a state court.—Pleading.

That the general assembly may have power to set aside the judgment of a state court, does not prevent it from being the highest court of law to which error will lie, under the act of 1789. A plea, by a collector of customs, under the fourth section of the act of 4th August 1790, that a former bond for duties was due and imposed on the 5th of November, shows ground for rejecting a bond tendered on the 7th of November, and is good, on special demurrer; it need not aver that the former bond was unsatisfied, at the time the subsequent one was tendered.

THIS was a writ of error on a judgment given in the Superior Court of judicature, court of assize and jail delivery, for the county of Providence, in the state of Rhode Island; and the case, appearing on the record, was as follows:

Olney, the plaintiff in error, was the collector of imposts for Rhode Island; Arnold, the defendant in error, was owner of the Ship Neptune; and a citizen named Dexter, as the declaration alleged, was owner of the cargo of the ship; which arrived from Surinam, at Providence, about four o'clock P. M. on the 6th of November 1792. On that day, the parties applied for a permit to land the cargo, and offered bonds to pay the duties; but the collector refused or neglected to accept the bonds and grant the permit. On the 7th of November, a second application was made for a permit, and bonds, actually executed, were tendered for the payment of the duties; but the collector again peremptorily refused to accept the bonds or to grant the permit; in consequence of which, the vessel, with the cargo on board, remained at a heavy expense, from the 6th to the 13th of November; and Arnold laid his damages at 200L.

Olney, the defendant in the court below, pleaded that by the 41st section of the act of congress, passed on the 4th of August *1790, “to provide more effectually for the collection of the duties, &c.,” it is declared, “that all duties on goods, wares and merchandise imported, shall be paid, or secured to be paid, before a permit shall be granted for landing the same;” and that “no person whose bond for the payment of duties is due and unsatisfied, shall be allowed a future credit for duties, until such bond shall be fully paid or discharged;” that on the 17th of January 1792, Arnold being indebted for duties, gave a bond for the amount, payable on the 17th of May ensuing; that on the 5th of November 1792, the term for payment of the bond was elapsed, but the same then remained unpaid and undischarged; that Arnold was the real owner of the cargo, but had fraudulently transferred it to Dexter, in order to obtain a credit at the custom-house; that though Dexter had tendered a bond on the 7th of November, it was rejected by virtue of the recited act of congress; and that a permit had been refused, until the duties of the cargo were paid, or Arnold’s old bond was discharged.

To this plea, the plaintiff below demurred, and assigned the following causes of demurrer: 1st. Because the matters contained in the plea might

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be given in evidence, if at all, under the general issue ; and they amount to no more than the general issue. 2d. Because the plea states the property of the cargo to be in Arnold, and does not traverse the property of Dexter therein. 3d. Because it does not appear that the old bond given by Arnold was unsatisfied, after the 5th of November 1792. 4th. Because the bond given by Arnold was for his own proper debt, and the bond tendered by Dexter was for his own proper debt : and 5th. Because the plea is inconsistent, uncertain, not issuable and wants form.

The defendant joined in demurrer : and thereupon, the court of common pleas for the county of Providence decided, that the plea was a sufficient bar to the action ; and in December 1792, gave judgment for the defendant accordingly. From this judgment, the plaintiff appealed to the superior court of judicature, where it was adjudged, in December 1794, that the plea in bar was not sufficient ; and the cause was remitted to the county court for trial. On the trial, the jury gave a verdict for the plaintiff, damages 13*l.* 5*s.*, with costs : and the defendant below brought the present writ of error to remove the proceedings into the supreme court of the United States ; the construction and validity of the act of congress, under which the defendant justified, being involved in the decision of the state court. Constitution of the United States, Art. III. § 2. (1 U. S. Stat. 42, § 19.)

*³¹⁰Two leading questions were made in this case ? 1st. Whether the plea was a sufficient bar to the action ?—particularly on the ground of the third cause assigned upon the demurrer ; as the defendant only alleged Arnold's old bond to be unpaid on the 5th of November, whereas, he admitted a tender of a bond for the duties on the 7th of November. And 2d. Whether the superior court, on whose judgment the writ of error was brought, or the general assembly, was the highest court of law or equity of the state of Rhode Island, in which a decision of the fact could have been had ?

The first question was argued at the last term, by *Pringle* and *Dexter*, for the defendants in error, and by *Lee*, attorney-general, for the plaintiff in error : but THE COURT declaring it to be unnecessary to give any opinion on the principal case, until it was decided, whether the record was regularly before them, directed the second question to be discussed at the present term ; when *Lee*, attorney-general, again argued for the plaintiff in error, and *Ingersoll*, for the defendant.

The *Attorney-General*, in contending that the writ of error was well brought, stated, that there could be no doubt, that this court had jurisdiction in the present cause, as it appeared upon the record, that the construction of an act of congress, under which the collector justified, had been drawn into question, and no other error could be assigned. He said, that there were two obvious reasons, why the legislature of Rhode Island, could not be considered as the court contemplated by the law : for, in the first place, it must be a court of law or equity, (a) in which a decision of the suit could be had. A decision imports a final determination between the litigants ; and not a partial adjudication, which settles one point of the controversy, and refers

(a) *Ellsworth*, Chief Justice.—As this is a question of law, it is not material to inquire, whether it was the superior court of equity.

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the rest to another tribunal. Though, therefore, the legislature should be vested with an equitable power, to examine the proceedings of a court of law, and if it thinks proper, to direct a new trial ; this cannot be regarded as constituting a court of law, within the meaning of the act of congress. But in the second place, it must be a court of law or equity, from which a writ of error could be obtained. The 25th section of the judicial act requires, that the citation, without which, a writ of error cannot be available, should be signed by the chief justice or judge, or chancellor of the court, rendering or passing *the judgment or decree complained of; and no such officer ^[*311] is a constituent part of the legislature.(a) The jurisdiction of the general assembly in matters of law, depends on an act of their own body. Laws of Rhode Island.(b)

(a) CHASE, Justice.—The citation may likewise be signed by a justice of this court.

Lee, Attorney-General.—True, but the act contemplates giving an alternative to accommodate the party.

(b) The act is in the following words: “An act directing the method of preferring petitions unto the general assembly, and of acting thereon. Be it enacted by the general assembly, and by the authority thereof, it is enacted, that whenever any person or persons shall prefer a petition to the general assembly, praying that any judgment, rule of court or determination whatever may be set aside, and that execution may be stayed, he or they so petitioning shall, at least three weeks before the session of the general assembly to which such petition shall be preferred, deliver and lodge his or their petition in the secretary’s office; and giving bond in the said office, with one sufficient surety, in such sum as he, the secretary, considering the nature of such suit or executions, shall think meet: the condition of which bond shall be for the payment of all lawful costs and damages, which the adverse party shall sustain by means of preferring such petition; and that, thereupon, the secretary shall issue a citation, for the adverse party to appear (if he or they shall think fit) at the session of the general assembly, to which such petition shall be preferred, to show cause why such petition should not be granted; and the adverse party shall be served with such citation, and a copy of such petition, by the sheriff of the county or his deputy, where he or they may dwell, ten days at least before such session of the general assembly; and if such person or persons cannot be found by the sheriff or his deputy, then, the leaving a copy of the petition and citation at the usual place of his or their abode, shall be deemed a good service; and the sheriff or deputy shall make return of all his proceedings to the clerk of the lower house, at the first opening of the general assembly. And that, when any petition shall be called for trial, if there be not a proper return made by the sheriff or his deputy, that the adverse party hath been duly notified as this act requires, such petition shall be immediately dismissed.

And be it further enacted by the authority aforesaid, that when any petition shall be received by the general assembly, the granting the prayer whereof may, by any means, relate to or concern the interest, property or character of any other person or persons whatsoever, that in such case, every such petition shall be referred to the next session of assembly, and the person or persons so petitioning shall, within ten days after the rising of the assembly, give bond in manner as afore directed; and all persons so concerned shall be duly served with a copy of such petition, and the vote of assembly thereon, and be cited in manner as aforesaid; and if the person or persons so petitioning shall neglect to give bond as aforesaid, then such vote or order of the general assembly referring such petition, shall be void and of no effect.

And be it further enacted by the authority aforesaid, that at the beginning of every session of the general assembly, a time shall be assigned for the hearing and determining all petitions pending before them; and the clerk of the lower house shall make a docket of all such petitions, in the same manner as the clerks of the courts of common

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*But, however extensive this power may appear to be, it is wholly of an equitable kind. The legislature may, like a chancellor, review the determinations of the courts of law, and direct the issue to be again tried; ^{*313]} but it is not itself a court in *which an ultimate decision can be had. The jurisdiction of the court, on whose judgment the present

pleas do, of actions, always noting in the margin, the time when each petition was filed ~~or~~ received; which docket shall be set up in view, in the house where the assembly shall sit, with a note at the bottom thereof, of the time appointed for their being heard: that each petition shall be called for and determined in its proper course as it stands upon the docket; and if the petitioner, being called, doth not appear, his petition shall be immediately dismissed, but if he doth appear to enforce his petition, and the respondent, upon being thrice called, shall not appear, the prayer of the petition shall be granted, if the same be reasonable.

And be it further enacted by the authority aforesaid, that no petition shall be received by the general assembly, except the petitioner shall pay the fees established by law; and that the same costs be allowed and taxed upon petitions preferred to the general assembly, in all respects and in every particular as are allowed by law, in cases before the inferior courts of common pleas; and the bills of costs shall be taxed by the clerk of the lower house, and allowed by the secretary: that the secretary shall grant execution for all costs, returnable to the next succeeding general assembly: and that the secretary and the clerk of the lower house, shall be allowed the same fees, in all respects, upon petitions, as are allowed to the clerks of the superior court of judicature, in cases before the said court.

And be it further enacted by the authority aforesaid, that when any new trial shall be awarded by the general assembly, to any person or persons, the party obtaining such new trial, shall pay all lawful costs and damages that he or they may have put the adverse party to, in defending against such petitions, unless he or they shall, upon such new trial, obtain some alteration of the former judgment, in his or their favor.

And be it further enacted by the authority aforesaid, that when any person or persons shall sustain any damage by reason of any petition preferred to the general assembly, concerning which bond shall have been entered into as aforesaid: the secretary shall deliver such bond to the person or persons so aggrieved, who may bring a suit on such bond, against the persons who gave the same; and the judges of the court where such suit shall be brought, are empowered to hear the parties concerning all matters of damages, as hereinbefore expressed; and on hearing, justly and equitably to determine the damages the party or parties complaining hath or have sustained, by staying the execution or other proceedings in such cause, or granting a new trial therein; and also to reduce the sum mentioned in such bond, to just damages, and to award execution accordingly.

And be it further enacted by the authority aforesaid, that every person who shall prefer a petition to the general assembly, for an act of insolvency, shall exhibit therewith a just and true inventory of all his real and personal estate, and also of what estate he may have in reversion or remainder, which shall be sworn to before an assistant justice, or warden, in the county wherein the petitioner shall dwell or be confined; and if such petition be received, the inventory shall be lodged with the clerk of the lower house, who shall give copies thereof to any creditor requiring the same; and if such petition be finally granted, the clerk of the superior court, in the county where the petitioner shall dwell or be confined, shall notify the creditors to appear before the judges of the said court, to nominate commissioners, &c., by an advertisement, to be inserted three weeks successively, in the several papers, where the principal creditors live.

Provided, nevertheless, and be it further enacted by the authority aforesaid, that all matters and regulations in this act, be extended to private petitions only, between party and party, anything hereinbefore contained to the contrary notwithstanding.

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writ of error is brought, is of a very different description, in its constitution, as well as in the effect of its adjudications. (a) The appeal was *carried [^{*314} from the inferior court into that court, as to the highest court of

(a) The Attorney-General referred to the laws of Rhode Island, constituting the superior and inferior courts, which it is thought expedient to insert at large by way of illustration to the case.

“An act for the establishment of a superior court of judicature, court of assize and general jail-delivery, in and throughout this colony.

“Be it enacted by the general assembly, and by the authority thereof it is enacted, That there shall be a superior court of judicature, court of assize, and general jail-delivery, over the whole colony, for the regular hearing and trying all pleas, real, personal and mixed, and all pleas of the crown; also all matters which respect the conservation of the peace, and punishment of offenders, whatever circumstances may attend such matters or things; whether arising between party and party, respecting debt, contract, right of freehold, damages, or personal injury, or whether between the king and his subjects, or mixed in nature; and whether brought in said court by appeal, writ of review, writ of error, *certiorari*, or otherwise, as the law directs: which court shall consist of one chief justice or judge, and four associate or assistant justices or judges, to be appointed and chosen by the general assembly, annually, for that end and purpose, any three of whom shall be a *quorum*, who shall be commissioned for the discharge of their office; and shall thereby have the same power and authority, in all matters and things in this colony, as the court of common pleas, king's bench or exchequer, have, or ought to have, in that part of Great Britain heretofore called England, and be empowered to give judgment in all matters and things before them cognisable, and to award execution thereon; and also to make such necessary rules of practice, as to them, from time to time, shall be thought needful, for the better regulation of such court, and the advantage of his majesty's subjects, so that such rules be not repugnant to any known laws. And that there be chosen annually by the general assembly, one clerk in each county for said court, who shall constantly attend the sitting of such court, in the respective counties for which they shall be chosen, shall keep the seal of the court, and make fair records and entries of the judgments and proceedings of the said court, and do and perform all other things which shall fall within their said office and duty, and that the said clerks shall have the same power and authority of subrogating and appointing deputies under them, in the same manner as the clerks of the several inferior courts of common pleas and general sessions of the peace have by law, and shall be alike accountable for their doings, and that such deputies shall be sworn before the said superior court, or one of the justices thereof, for the true performance of his duty.

“And be it further enacted by the authority aforesaid, that the said superior court of judicature, court of assize and general jail-delivery, in and throughout the colony, shall annually meet and sit at the following places and times, viz., at New Port, within and for the county of New Port, on the first Monday in September, and on the first Monday in March, at Providence, within and for the county of Providence, on the third Monday in September, and on the third Monday in March, at South Kingstown, within and for the county of King's county, on the first Monday in October, and on the first Monday in April, at Bristol, within and for the county of Bristol, on the second Monday in October, and on the second Monday in April; and at East Greenwich, within and for the county of Kent, on the third Monday in October, and on the fourth Monday in April. And that both the grand and petit jury in the several counties, shall give their attendance at said court, on the second day of the court's sitting, by nine of the clock in the forenoon; and in case of non-appearance of a sufficient number, such juries shall be filled up *de talibus circumstantibus*, as at the inferior courts of common pleas and general sessions of the peace, by the sheriff or his deputy.

“And be it further enacted by the authority aforesaid, that in all causes brought by appeal from any of the inferior courts of common pleas and general sessions of the

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common law; and is thence brought regularly hither. But if any doubt shall exist upon the subject, the construction should be in favor of that general principle, in the policy of all well-regulated, particularly of all republican governments, which prohibits an heterogeneous union of the legislative and judicial departments.

peace, unto the said superior courts of judicature, court of assize, and general jail-delivery, such bonds shall be given, reasons filed, and attested copies brought up, and all such other regulations observed, for bringing forward appeals, as are contained and directed in the acts for establishing such courts of common pleas and general sessions of the peace; and that in any appeal from the judgment of any inferior court of common pleas, to the said superior court of judicature, in civil actions, both parties shall have the benefit of any new or further evidence relating to the case.

“ And be it further enacted by the authority aforesaid, that when any person shall be found guilty of any crime by the petit jury, at any court of general sessions of the peace, for which he shall have been there tried by original process, and shall appeal from the sentence or judgment given on such verdict to the said court of assize and general jail-delivery, he shall there be duly heard thereon, by the court, who may alter such sentence in such manner as to them shall appear agreeable to law, and according to such discretionary powers as are vested in them; but the appellant shall not, in virtue of his appeal, have another hearing on the merits, or issue in fact, before another jury, at the said court appealed to: any law, custom or usage to the contrary in any wise notwithstanding.

“ And for the better attaining justice, in all cases tried at said superior court, where any penalty is forfeited, or conditional estate recovered, or equity of redemption sued for, whether judgment be confessed, or otherwise obtained, the judges of said court are hereby empowered and authorized to proceed according to the rules of equity, and to characterize forfeitures, and to enter up judgment for just debts and damages, as justice and equity require, and to award execution accordingly.

“ And be it further enacted, that any one of the judges of the superior court may, out of term time, grant a prohibition to stay proceedings in any court of vice-admiralty in this colony, if the same shall not appear to be properly within, and to appertain by law to, the jurisdiction of such court, and that a final determination and judgment, with regard to such prohibition, shall and may be given by the judges of the said superior court, or any three of them, being met, or meeting at any time to consider of such matter.

“ And all judgments of the aforesaid superior court shall be final, except where actions of review, and appeals to the king in council are by law allowed.”

“ An act empowering the justices of the several inferior courts of common pleas, in this colony, or any three of them, to constitute and hold special courts of common pleas, on certain occasions.

“ Be it enacted by the general assembly, and by the authority thereof it is enacted, that the justices of the several courts of common pleas in this colony, may, and they are hereby fully authorized and empowered to meet and hold special inferior courts of common pleas, within their several counties, any three of whom shall be a *quorum*, for the hearing and trying all such causes, as by law are or shall be cognisable, before such special courts to give judgment thereon, according to law, which shall be final, and to award execution; and that the clerks of the inferior courts of common pleas shall be clerks of the respective special courts to be held as aforesaid.

“ And be it further enacted by the authority aforesaid, that all writs and processes for the bringing any cause or suit to trial, shall issue out of the clerk’s office of said court, in his majesty’s name, under the seal of the court, be signed by the clerk and directed to the sheriff or his deputy, and security for prosecuting shall be given, where the plaintiff is not an inhabitant and freeholder in this colony, in the same manner as by law is required at the taking out a writ to the inferior court of common pleas in

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Ingersoll, in reply, classed his arguments under three points of inquiry: 1st. Is the legislature of Rhode Island a court? *2d. Is it a court of law? And 3d. Is it a court capable of giving a decision, within the meaning of the act of congress? ^[*315]

common cases. And that all such writs and processes issued as aforesaid, shall be served at least three days before the day of the sitting of such court, and the declaration shall be filed on such writ, at the opening of the court.

"Provided, always, and it is the true intent and meaning hereof, that when the sheriff, clerk, or town-sergeant, or any of them, are parties, the writ, original and judicial, shall be signed, directed to, and served by such person, as in such like case as the inferior courts of common pleas is ordered and directed.

"And be it further enacted, that if any person shall have right by law to commence a suit to a special court, he shall go to the chief justice, or one of his associates, justices of the inferior court, and make his request for the calling such special court, and the said justice shall thereupon give forth a notification, in writing, under his hand, to the other justices of such inferior court, warning them to meet at the day by him in such notification appointed, in order to hold a special court; which being done, any other person, entitled by law, may commence actions to such special court, without any further request or notification; and if any writs to special courts be made returnable in term time, no request or notice shall be necessary.

"And be it further enacted by the authority aforesaid, that if issue in fact shall be joined in any such case, a writ of *venire facias* shall issue to the sheriff or his deputy, or in case of the sheriff's being a party, then to such person as by law it may be, in such like case, at the stated inferior courts, to return to such special court twelve good and lawful jurors to try such issue. And that the fees at such special courts shall be the same as are allowed and taxed at the superior court.

"And be it further enacted, that execution on any judgment obtained at such special court, may issue immediately, and shall be returned into the clerk's office, in fourteen days after taking out the same.

"And it is hereby enacted, that the same rules shall be observed in commencing actions at special courts, with respect to the county in which the same shall be commenced, as by law are fixed for bringing transitory actions to the inferior courts of common pleas.

"And be it further enacted by the authority aforesaid, that the vendue-masters of the several towns in this colony be, and they are hereby empowered to bring actions to special courts for the recovery of any sum or sums of money due and payable to them for real estates, goods, effects, or things by them sold at public vendue, upon the buyer's neglecting or refusing to pay for the same, at the time in the conditions of sale set forth.

"And be it further enacted, that if any vendue-master shall neglect or refuse to pay unto any person, who shall have put any real estate, goods, wares, effects or things whatsoever into his hands, to be sold at public vendue, the money arising from such sale (provided he hath received the same), or if he have not received the same, if he shall neglect or refuse to call a special court for the recovery thereof, for the space of fifteen days after the time of payment mentioned in the conditions of sale, and doth not use his utmost speed and diligence for recovering such money, then it shall be lawful for any person, who put such real estate, goods, wares, effects or things whatsoever, into such vendue-master's hands, to sue such vendue-master at a special court, in like manner, and to have the same remedy to all intents and purposes, against such vendue-master, as he hath by law against the buyer.

"And be it further enacted, that the several sheriffs in this colony and their deputies, shall have full power and authority to commence actions to special courts for the recovery of any sum or sums of money, from any person or persons, for real estate, goods and chattels, by them attached and sold at vendue, if the same be not paid according to the conditions of sale.

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1. By the act of the general assembly, the legislature of Rhode Island is expressly constituted a court, supereminent in its jurisdiction; though, perhaps, novel in its formation and effects. The characteristic of a superior court of law is the power of calling parties before it, in order to affirm or reverse the judgments of inferior tribunals. This cannot be done by a court ^{*316]} of equity; nor can it be done by a legislative body, in ^{*316]} its ordinary capacity: and yet it can be done by the general assembly of Rhode Island, sitting as a court of law, under the authority of a legislative act. For such occasions, a regular docket is kept; the causes are entered; the parties are called upon, in the course of the term; a clerk is employed; and the judgment of the inferior court may be reversed. It is true, that the general assembly cannot try a fact; but neither can the House of Peers; yet, that is, undoubtedly, the highest court of justice in Great Britain. It is, likewise true, that the act of Rhode Island does not say anything respecting the power of ^{*317]} the general assembly, to affirm a judgment; but if they refuse to interfere upon any petition, is not the refusal, virtually, an affirmance of the judgment, of which the petition complains? If, then, the powers of a court are thus vested in the general assembly, mere abstract

And be it further enacted by the authority aforesaid, that the sheriffs of the several counties in this colony, or their deputies, or the town-sergeant of any town, who shall return any execution, that is delivered to them, to the court, to which the same is returnable, satisfied, and do not pay the debt due on such execution to the plaintiff, or party who recovered the judgment, or shall return any execution not satisfied or unsatisfied, without having orders from the party who recovered the judgment, for so doing, or neglecting to make return of any execution in term time to which the same is returnable, or at any particular day mentioned in any execution for the return thereof, the person in whose favor any such execution was granted, shall have full power and authority to call a special court, at any time twenty days after the rising of the court, or time to which such execution was returnable, for the recovery of the contents thereof; and that the sheriffs shall have the same power of calling special courts on their respective deputies who shall be guilty in the premises, or shall neglect to do his duty.

And be it further enacted, that when the marshal of the court of vice-admiralty in this colony, or his deputy, shall sell or dispose of any goods, wares, merchandise, effects or things whatsoever, in consequence of any order, sentence or decree of said court, and the conditions of sale shall not be complied with by the purchaser, the said marshal or his deputy is hereby empowered to call a special court for the recovery of any sum due for goods and merchandise so sold; and shall be liable to be sued at a special court, in the same manner as the vendue-masters in this colony are liable for the money arising on the sale of such goods and merchandise as have been or shall be sold, any law, custom or usage, to the contrary notwithstanding.

And be it further enacted, that the directors of all lotteries which are already, or shall be granted by the general assembly, for raising money for public use, and each of them, shall, for the more speedy recovery of all such sums as are or shall become due for tickets, have power to sue for the same at special courts. And that all persons entitled to a prize or prizes from any director, after demanding payment and a refusal or neglect of the same, shall have like power to sue any such director for the same, at a special court.

And be it further enacted, that special courts shall and may be held, for the trial of persons for any breach or breaches, of an act entitled "an act to prevent stage-plays and other theatrical entertainments, within this colony," and for the recovery of the fines and forfeitures in said act contained.

The Phœbe Anne.

considerations of policy cannot be allowed, judicially, to obstruct or defeat their exercise.

2. And if the general assembly is a court, its jurisdiction is clearly of a common-law description; in the nature of a writ of error, to revise and correct the decisions of inferior common-law courts.

*3. The act of congress provides, that the removal of a cause from a state court, in the specified cases, should only be "from a final judgment or decree in any suit, in the highest court of law or equity, of a state, in which a decision in the suit could be had." Now, Olney might, by petition, have obtained from the general assembly, a construction on the act of congress, which he pleaded in bar to the action brought against him. The name or title of the officer, who attests the process, cannot be material —whoever was the presiding magistrate, when the general assembly sat as a court, (a) might authenticate the citation, or it might be granted by a judge of the supreme court. Suppose, indeed, that the judgment were to be affirmed here, Olney might still petition the legislature, and obtain a reversal and new trial; unless it can be maintained, that the decision of this court will work a repeal of the law of Rhode Island.

The cause was held under advisement, until the 8th of August, when the Chief Justice delivered the following decision on the point last argued:

BY THE COURT.—We are clearly of opinion, that the superior court of Rhode Island, on whose judgment this writ of error is brought, is the highest court of law of that state, within the meaning of the 25th section of the judicial act. The general assembly might set aside, but they could not make, a decision.

The CHIEF JUSTICE then delivered the opinion of the court on the first point: in consequence of which, the judgment of the superior court of Rhode Island was reversed, and the judgment of the inferior court affirmed.

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MOODIE *v.* The Ship PHŒBE ANNE.

Neutrality.

Under the treaty with France, a privateer has a right to make repairs in our ports. The mere replacement of her guns, is not an augmentation of her force.

ERROR from the Circuit Court for the district of South Carolina.

The Phœbe Anne, a British vessel, had been captured by a French privateer, and sent into Charleston. The British consul filed a libel, claiming restitution of the prize, upon a suggestion, that the privateer had been illegally outfitted, or had illegally augmented her force, within the United States. On the proofs, it appeared, that the privateer had originally entered the port of Charleston, armed and commissioned for war; that she had there

(a) IREDELL, Justice.—To show that, in the case of petitions, respecting the judicial proceedings of inferior courts, the general assembly does not act as a legislature, it may be observed, that both houses then sit in one room, as one body; but when engaged in making laws, the houses sit in separate rooms, as distinct bodies.