taken out her guns, masts and sails, which remained on shore, until the general repairs of the vessel were completed, when they were again put on board, with the same force, or thereabouts ; and that, on a subsequent cruise, the prize in question was taken. The decrees in the district and circuit courts were both in favor of the captors ; and on the return of the record into this court, *Reed*, having pointed out the additional repairs, argued, generally, on the impolicy and inconveniency of suffering privateers to equip in our ports.

Ellsworth, Chief Justice.—Suggestions of policy and convenience cannot be considered in the judicial determination of a question of right : the treaty with France, whatever that is, must have its effect. By the 19th article, it is declared, that French vessels, whether public and of war, or private and of merchants, may, on any urgent necessity, enter our ports, and be supplied with all things needful for repairs. In the present case, the privateer only underwent a repair ; and the mere replacement of her force cannot be a material augmentation ; even if an augmentation of force could be deemed (which we do not decide) a sufficient cause for restitution.

By the Court.—Let the decree of the circuit court be affirmed. (*a*)

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*320] *Grayson *v.* Virginia.

Process against a State.

Equity process against a state must be served sixty days before the return-day thereof ; after which, in default of appearance, the plaintiff may proceed *ex parte*.
Such process must be served on the chief executive magistrate, and the attorney-general of the state.

Bill in Equity. The service of the *subpœna* in this case, being proved, *Lewis* moved, at the last term, that a *distringas* might be awarded, in order to compel the state to enter an appearance ; arguing, from the analogy between a state and other bodies corporate, that this was the proper mode of proceeding. The Court, however, postponed a decision on the motion, in consequence of a doubt, whether the remedy to compel the appearance of a state, should be furnished by the court itself, or by the legislature ? And in the present term, *Lewis* argued, that the court was competent to furnish all the necessary means for effectuating its own jurisdiction.

On the 12th of August, the Chief Justice delivered the following opinion.

By the Court.—After a particular examination of the powers vested in this court, in causes of equity, as well as in causes of admiralty and maritime jurisdiction, we collect a general rule for the government of our proceedings ; with a discretionary authority, however, to deviate from that rule, where its application would be injurious or impracticable. The general rule prescribes to us an adoption of that practice, which is founded on the custom and usage of courts of admiralty and equity, constituted on similar principles ; but still, it is thought, that we are also authorized to make such

(*a*) See The Ship Den Onzekeren, *ante*, p. 285.

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deviations as are necessary to adapt the process and rules of the court to the peculiar circumstances of this country, subject to the interposition, alteration and control of the legislature.(*a*)

We have, therefore, agreed to make the following general orders; and the counsel, in the present case, will take his measures accordingly.

1. Ordered, that when process at common law or in equity, shall issue against a state, the same shall be served upon the governor, or chief executive magistrate, and the attorney-general of such state.

*2. Ordered, that process of *subpœna* issuing out of this court, in any suit in equity, shall be served on the defendant, sixty days before the return day of the said process; and further, that if the defendant, on such service of the *subpœna*, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*. [*321

Lewis then observed, that the *subpœna* in this case had been issued on the same principles; but as the orders could only operate *in futuro*, he thought it best to withdraw his motion for a *distringas*, and to pray that an *alias subpœna* might be awarded, which was accordingly done.

WISCART *et al.*, Plaintiffs in error, *v.* D'AUCHY, Defendant in error.

Appellate jurisdiction.

The appellate jurisdiction of the supreme court can only be exercised in conformity with the regulations prescribed by congress.[1]

If a decree in equity find a fact, it is such a statement of it, as is required by the judiciary act.

A statement of the facts, placed upon the record by the circuit court, is conclusive, even if the evidence be sent up with it.[2]

ERROR to the Circuit Court for the Virginia district. The original proceeding was on the equity side of the court below, where the defendant in error had filed a bill, charging Adrian Wiscart and Augustine De Neufville, copartners, with having fraudulently conveyed all their estate, real and personal, by three separate deeds, to Peter Robert De Neufville (who was also made a defendant to the bill), with a view to prevent the complainant's recovering the amount of a decree, which he had formerly obtained in another suit against them. The answers averred the conveyances to be made *bonâ fide*, and for a valuable consideration; but after a full hearing of the case, the circuit court (consisting of Judges IREDELL and GRIFFIN) delivered the following opinion:

"That the deeds filed as exhibits in this cause, one dated on the 20th of May 1793, conveying the goods and chattels in the schedule thereunto annexed, to the defendant, P. R. De Neufville; another dated on the 17th of

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(*a*) See the Judicial Act, § 14. (1 U. S. Stat. 81.) The act to regulate processes in the federal courts, § 2. (Id. 93.)

[1] The Perseverance, *post*, p. 336; The Charles Conter, 4 Dall. 22; United States *v.* Hooe, 1 Cr. 318; Sarchet *v.* United States, 12 Pet. 143; Minor *v.* Tillotson, 2 How. 392; Kelsey *v.* Forsyth, 21 Id. 85; Ex parte McCardle, 7 Wall. 512; Merrell *v.* Petty, 16 Id. 342; Murdoch *v.* Memphis, 20 Id. 620.

[2] The Perseverance, *post*, p. 336; Insurance Co. *v.* Folsom, 18 Wall. 249; The Abbotsford, 98 U. S. 442.