it seems to the court, that the rights of the party remain unaffected by the act. If London had been ordered to Maryland for a day, and then brought with his master into Alexandria, the construction of his counsel would be satisfied; and it seems strange, where the letter of a law has not been violated, that such an unimportant circumstance should affect its spirit.

Unless this mode be admitted of coming within the proviso, a person inclining to remove into Virginia, whose slaves had preceded him, though not for one year, could not bring himself within, or avoid the forfeiture, *331] although permitting them to come into that state was no *offence; a construction of the act which the court cannot think consistent with its spirit or letter.

This court is, therefore, of opinion, that the circuit court erred, in directing the jury that, under the circumstances stated, the plaintiff below was entitled to his freedom, and doth reverse the judgment rendered by the circuit court, and remand the cause for further proceedings.

Judgment reversed.

Wise *v.* Withers.

Militia duty.—Sentence of court-martial.

A justice of the peace in the District of Columbia is an officer of the government of the United States, and, as such, exempt from militia duty.

A court-martial has not exclusive jurisdiction of that question, and its sentence is not conclusive.

Trespass lies against a collector of militia fines, who distrains from a fine imposed by a court-martial, upon a person not liable to be enrolled in the militia—the court-martial having no jurisdiction in such cases.[1]

Wise *v.* Withers, 1 Cr. C. C. 262, reversed.

Error to the Circuit Court of the district of Columbia, in an action of trespass *vi et armis*, for entering the plaintiff's house, and taking away his goods. The defendant justified as collector of militia fines. The plaintiff replied, that at the time when, &c., he was one of the United States' justices of the peace for the county of Alexandria. This replication, upon a general demurrer, was, by a majority of the court below, adjudged bad; whereupon, the plaintiff sued out a writ of error, and the questions made on the argument were—

1. Whether a justice of the peace, for the county of Alexandria, was liable to do militia duty? and—

2. Whether an action of trespass will lie against the officer who makes distress, for a fine assessed upon a justice of the peace by a court-martial?

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[1] But see Shoemaker *v.* Nesbit, 2 Rawle 201, where it is ruled, that if a court-martial, acting in good faith, convicts a person, not subject to militia duty, of the offence of non-attendance at training, neither the members of the court, nor the officer who executes their sentence, are liable as trespassers *ab initio*. Chief Justice Gibson there says, that the court must necessarily have power to decide upon the question of liability to military duty, which is the subject-matter; and therefore, an erroneous decision will not render them responsible in trespass. And see Savacool *v.* Boughton, 5 Wend. 179–80 where the soundness of the decision in Wise *v.* Withers is strongly questioned. And in Dynes *v.* Hoover, 20 How. 65, it is held, that where a court-martial has jurisdiction over the subject-matter, and its proceedings are in a regular course of law, the officer who executes its sentence will be protected. See also Vanderheyden *v.* Young, 11 Johns. 150.

C. Lee, for the plaintiff in error.—This case depends upon the act of congress of March 3d, 1803, entitled "an act more effectually to provide for the organization of the militia of the district of Columbia" (2 U. S. Stat. 215). *The 6th section says, "that the commanding officers of companies shall enroll every able-bodied white male, between the ages [*332 of eighteen and forty-five years (except such as are exempt from military duty by the laws of the United States), resident within his district."

The act of congress of the 8th of May 1792, § 2 (1 U. S. Stat. 272) exempts from militia duty the vice-president of the United States; the officers, judicial and executive, of the government of the United States; the members of both houses of congress, and their respective officers; all custom-house officers, with their clerks; all post-officers, and stage-drivers, who are employed in the care and conveyance of the mail of the post-office of the United States; all ferrymen, employed at any ferry on the post-road; all inspectors of exports; all pilots; all mariners actually employed in the sea-service of any citizen or merchant within the United States; and all persons who now are, or may hereafter be, exempted by the laws of the respective states." This act applies not only to such officers as then existed, but to all such as might thereafter be created.

If the plaintiff is an officer, judicial or executive, of the government of the United States, he is exempted.

In *Marbury's Case*, 1 Cr. 168, this court decided, that a justice of the peace, for the district of Columbia, was an officer, and that he became such as soon as the commission was signed, sealed and ready to be delivered. If the commission, therefore, is a criterion to decide who is an officer, we are at a loss to conceive what objection can be taken. The justices of the peace for the district of Columbia are appointed by the President of the United States, by and with the advice and consent of the senate, and are commissioned by the president. Their powers and duties are prescribed by the act of congress, "concerning the district of Columbia," § 11 (2 U. S. Stat. 107). Whether those powers are judicial or executive, or both, is immaterial.

*_Jones_, contrà.—1. A justice of the peace, in the district of Columbia, is not a judicial officer of the government of the United States. [*333 By the act of congress, those appointed for the county of Alexandria are to exercise the same powers and duties as justices of the peace in Virginia. The expression in the act of 1792, "officers judicial of the government of the United States," means only the judges of the supreme and inferior courts of the United States. Justices of the peace in the states are not considered as judicial officers. By the constitution of Massachusetts, the judicial officers are to hold their offices during good behavior, and yet the commissions of justices of the peace are limited to seven years. So the constitution of the United States says, that the judges, both of the supreme and inferior courts, shall hold their offices during good behavior; but by the act of congress, the justices of the peace in the district of Columbia are to hold their offices only for five years. These justices, therefore, are either not judges, or the constitution has, in this respect, been violated. It is plain, however, that congress did not consider them as judges. A sheriff sometimes acts as a judicial officer in holding elections; and some of the officers in the execu-

tive departments exercise judicial functions in many cases, but they are not, therefore, judges. An act of congress may give judicial powers to certain officers, but they are not, therefore, judges.

2. He is not an executive officer "of the government of the United States." This description was intended, by the act of 1792, to comprehend only the officers of the superior departments, or those which strictly constitute the government of the United States, in its limited sense. This is to be inferred, because the act goes on to enumerate, by name, all the inferior officers which it meant to exempt. Why enumerate, if the general description comprehended the whole?

3. The circuit court of the district of Columbia has not jurisdiction of this question. The question who is *to be enrolled in the militia, and the assessment of the fines, are matters submitted exclusively to the courts-martial, which are courts of peculiar and extraordinary jurisdiction, specially appointed for that purpose, by the act of congress (2 U. S. Stat. 217, § 8). The words are, the "presiding officer shall lay before the said court (the battalion court of inquiry) all the delinquencies, as directed by law, whereupon, they shall proceed to hear and determine." There is no provision for revising the decisions of those courts-martial. They are final and conclusive, like those of an ecclesiastical court, or a court of admiralty.

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If they have jurisdiction, and especially, if they have exclusive and final jurisdiction in the case, the officer who executes their orders is justified. He cannot be considered as a trespasser.

C. Lee, in reply.—There can be no doubt but the plaintiff is an officer. There can be as little that he is an officer judicial or executive, or both; and if he is not an officer of the government of the United States, he is not the officer of any other government. There is no distinction between an officer of the United States and an officer of the government of the United States. An officer appointed by the President of the United States, to an office created by a law of the United States, and exercising his authority in the name of the United States, must be as much an officer of the government of the United States, as any other officer in the United States. The reason of enumerating other officers by name was, because it might, perhaps, be doubted whether they would come under the general description of officers judicial and executive.

As to the jurisdiction of the circuit court. A limited power given to certain tribunals, not extending to all persons, cannot control the general jurisdiction given to that court. Whenever a peculiar limited jurisdiction is given to certain persons, and they exceed it, not only their *officers, but they themselves are liable to an action. They are all subject to the general law of the land. If this were not the case, and a court-martial should compel a man of more than forty-five years of age, for example, to perform militia duty, and continue to fine him from time to time, there would be no redress.

*335]

The court-martial, in the present case, had no jurisdiction over the person of the plaintiff. He was exempt, and therefore, they could delegate no authority to their officer.

February 19th, 1806. MARSHALL, Ch. J., delivered the opinion of the

court.—In this case, two points have been made by the plaintiff in error. 1st. That a justice of the peace in the district of Columbia is, by the laws of the United States, exempt from militia duty. 2d. That an action of trespass lies against the officer who makes distress, in order to satisfy a fine assessed upon a justice of the peace, by a court-martial.

1. Is a justice of the peace exempt from militia duty? The militia law of the district refers to the general law of the United States, and adopts the enumeration there made of persons who have this privilege. That enumeration commences with "the vice-president of the United States, and the officers, judicial and executive, of the government of the United States."

It is contended by the plaintiff, and denied by the defendant, that a justice of the peace, within the district, is either a judicial or an executive officer of the government, in the sense in which those terms are used in the law. *It has been decided in this court, that a justice of the peace is [*336
an officer; nor can it be conceived that the affirmative of this proposition, was it now undecided, could be controverted. Under the sanction of a law, he is appointed by the president, by and with the advice and consent of the senate, and receives his commission from the president. We know not by what terms an officer can be defined, which would not embrace this description of persons. If he is an officer, he must be an officer under the government of the United States. Deriving all his authority from the legislature and president of the United States, he certainly is not the officer of any other government.

But it is contended, that he is not an officer, in the sense of the militia law; that the meaning of the words "judicial and executive officers of the government," must be restricted to the officers immediately employed in the high judicial and executive departments; and in support of this construction, the particular enumeration which follows those words is relied on; an enumeration which, it is said, would have been useless, had the legislature used the words in the extended sense contended for by the plaintiff. A distinction has also been attempted between an officer of the United States and an officer of the government of the United States, confining the latter more especially to those officers who are considered as belonging to the high departments; but, in this distinction, there does not appear to the court to be a solid difference. They are terms which may be used indifferently to express the same idea.

If a justice of the peace is an officer of the government of the United States, he must be either a judicial or an executive officer. In fact, his powers, as defined by law, seem partly judicial, and partly executive. He is, then, within the letter of the exemption, and of course, must be considered as comprehended within its proper construction, unless there be something in the act which requires a contrary interpretation. The enumeration which follows this general description of officers, is urged as furnishing the guide which shall lead us to the more limited construction. But to this [*337
*argument it has very properly been answered, by the counsel for the plaintiff, that the long enumeration of characters exempted from militia duty which follows, presents only one description of persons; custom-house officers, and those who hold a commission from the president, or are appointed by him: and of these by far the greater number do not hold such commis-

sion. The argument, therefore, not being supported by the fact, is inapplicable the case.

The law furnishing no justification for a departure from the plain and obvious import of the words, the court must, in conformity with that import, declare that a justice of the peace, within the district of Columbia, is exempt from the performance of militia duty.

It follows, from this opinion, that a court-martial has no jurisdiction over a justice of the peace, as a militiaman; he could never be legally enrolled; and it is a principle, that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all trespassers.

The judgment is reversed, and the cause remanded for further proceedings.

United States *v.* Grundy and Thornburgh.

Forfeiture.

Under the act of congress of December 31st, 1792, which declares, that if a false oath be taken in order to procure a register for a vessel, the vessel or its value shall be forfeited, the United States have an election to proceed against the vessel as forfeited, or against the person who took the false oath, for its value. But until that election is made, the property of the vessel does not vest in the United States; and the United States cannot maintain an action for money had and received, against the assignees of the person who took the oath, and who had become bankrupt; the assignees having sold the vessel, and received the purchase-money before seizure of the vessel.[1]

Error to the Circuit Court of the United States for the district of Maryland, in an action for money had and received for the use of the United States, by the defendants, as assignees of Aquila Brown, jr., a bankrupt; it being money received by the defendants for the sale of the ship Anthony Mangin, which ship the United States alleged was forfeited to them, by
*338] reason that Brown, in *order to obtain a register for her, as a ship of the United States, had falsely sworn that she was his sole property, when he knew that she was in part owned by an alien.

On the general issue, a verdict was rendered for the defendants, and the plaintiffs took three bills of exception.

1. The first stated that they gave in evidence to the jury, that on the 25th of November 1801, and for several months before and after, Aquila Brown, jr., a citizen of the United States, and Harman Henry Hackman, a subject of the elector of Hanover, were copartners in merchandise, and carried on trade at Baltimore, under the firm of Brown & Hackman, and that Brown, at the same time, carried on trade at Baltimore, on his separate account, under the firm of A. Brown, jr. That before that day, and during the year preceding, the ship Anthony Mangin was built, rigged and equipped, within the United States, for the house of Brown & Hackman, under a contract made for them, and under their authority, and was paid for with

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[1] Caldwell *v.* United States, 8 How. 366. It is otherwise, when no such option is given to the United States, but an absolute forfeiture is declared; in such cases, the forfeiture relates to the commission of the offence, and will override a subsequent sale to a *bonâ fide* purchaser. The Neptune, 3 Wheat. 607; Caldwell *v.* United States, 8 How. 381–2; Henderson's Distilled Spirits, 14 Wall. 44, 56; The Monte Christo, 6 Ben. 148.