nine inches from the keel, and that she then showed only three inches out of water, and, of course, that she then drew, forward and aft, unloaded, three feet and six inches. The purchase was thus made by the defendant, with his eyes open, after every opportunity had been afforded him for the inspection of the vessel.

DECREE AFFIRMED.

ALEXANDER *v.* ROULET.

Prefects in California, however appointed or elected, had no power, after the conquest of the country by the United States, to make grants of the common or unappropriated lands of the pueblos within their jurisdiction. And titles derived from them cannot, unless assisted by legislation, be regarded as valid.

ERROR to the Circuit Court for the District of California.

Alexander brought ejectment against Roulet and others in the court below to recover a piece of land in San Francisco, California. The title was thus: The conquest of California was complete, as decided by this court,* July 7th, 1846. On the 12th of January, 1850, Horace Hawes, at that time, by virtue of an appointment from the then military governor of the then Territory of California, and an election by the people of the district, acting as the prefect of the district embracing the then pueblo, now city of San Francisco, granted to Edward Carpenter the premises in controversy. The title of Carpenter, thus acquired, became vested in the plaintiff. The premises were within the limits of the said pueblo, now city of San Francisco.

The court gave judgment for the defendant, holding, among other things, that although each prefect of California, while the same was part of the Mexican territory, had power to make grants of the common and unappropriated lands of the pueblos within their jurisdiction, yet that

* Stearns *v.* United States, 6 Wallace, 590.

from and after the conquest and acquisition of the country by the United States they ceased to have such power, and, consequently, that the grant of Prefect Hawes was void.

On error here, among the questions raised were these:

1. Whether, while California was still part of the Mexican territory, prefects there had power to make grants of the common or unappropriated lands of pueblos within their jurisdiction.

2. Assuming that they had the power while the region was under Mexican rule, whether prefects *elected by the people* as well as appointed by military governors of the United States, after the cession and conquest, had the same power.

Messrs. W. Irvine and S. Heydenfelt, for the plaintiff in error; Mr. Hall McAllister, contra.

Mr. Justice DAVIS delivered the opinion of the court.

It has been repeatedly decided by this court that a recovery cannot be had in an action of ejectment in the Federal courts except on a legal title, and the inquiry is, whether the plaintiff in this case is clothed with such a title.

This title rests on the authority of Horace Hawes, acting as prefect of the district, embracing the then pueblo of San Francisco, under the appointment of the military governor of California and an election by the people of the district, to grant a part of the common lands of the pueblo.

It is not necessary for the purposes of this suit to decide whether prefects of California, while the same was a part of the Mexican territory, were authorized to make grants of the common or unappropriated lands of the pueblos within their jurisdiction, because in this case the grant was after the conquest and acquisition of the country by the United States, and if the prefect had such authority before that event it clearly ceased with the changed relations of the people. By the conquest of the country, Mexican rule was displaced and with it the authority of Mexican officials to alienate the public domain, and as a necessary consequence of this conquest, the Constitution of the United States, which

gives to Congress the disposition of the public lands, was extended over the territory of California. Until Congress provided a government for the country it was in charge of military governors, who, with the aid of subordinate officers, exercised municipal authority; but the power to grant land or confirm titles was never vested in these military governors,* nor in any person appointed by them.

It is contended, however, that Hawes's election by the people of the pueblo to the office of prefect on the retirement of the Mexican officials, gave him all the power a Mexican prefect would have had if the country had not been conquered. Is this position maintainable? Pueblos or towns, by the laws of Mexico, were entitled to a certain quantity of lands adjoining them, which were held in trust for the benefit of their inhabitants. The nature and extent of these pueblo rights have been the subject of a great deal of controversy since the acquisition of California, and came before this court for consideration in the case of *Townsend* v. *Greeley*.† Mr. Justice Field, in delivering the opinion of the court in that case, says: "It may be difficult to state with precision the exact nature of the right or title which the pueblos held in these lands. It was not an indefeasible estate; ownership of the lands in the pueblos could not in strictness be affirmed. It amounted in truth to little more than a restricted or qualified right to alienate portions of the land to its inhabitants for building or cultivation and to use the remainder for commons, for pasture-lands, or as a source of revenue or for other public purposes. This right of disposition and use was in all particulars subject to the control of the government of the country." Manifestly, if this right of disposition and use were subject to Mexican control while Mexican rule prevailed, it was equally subject to the control of our government when this rule was changed. It must be conceded that these pueblos had an equitable right to have their common lands confirmed to them, but they did not hold them as a private individual

* Mumford *v.* Wardell, 6 Wallace, 435.

† 5 Wallace, 336.

does his estate, and it needed legislative action to ripen this equitable right into a legal title. Congress has acted upon this subject and confirmed the lands of the pueblo of San Francisco, including the demanded premises, and this confirmation could not enure to the benefit of any one claiming under a grant by an American prefect, unless there were an express declaration to that effect. As there is no pretence that the grant in this case was protected by legislation, it follows that the plaintiff has no title of any sort to rest upon.

JUDGMENT AFFIRMED.

THE SIREN.

1. The right of vessels of the navy of the United States to prize-money comes only in virtue of grant or permission from the United States, and if no act of Congress sanctions a claim to it, it does not exist.
2. No such act gives prize to the navy in cases of joint capture by the army and navy.
3. In cases of such capture, the capture enures exclusively to the benefit of the United States.

APPEAL from the District Court for the District of Massachusetts; the case being thus:

Prior, and up to the morning of the 17th of February, 1865, a naval force of the United States, composed of the Gladiolus, and twenty-six other vessels of war, were blockading the port of Charleston and assisting to reduce the city; *a force operating also by land in the same general designs.* During the night of the 16th and 17th, the rebel forces evacuated the forts about the harbor, and abandoned the city. At 9 o'clock on the morning of the 17th, an officer of the land force raised the national flag upon Forts Sumter, Ripley, and Pinckney. At 10 a military officer reached Charleston; and the city surrendered itself, and the rebel stores, arms, and property there to him. Contemporaneously with these transactions the army approached the city, and the fleet moved towards its wharves. As the latter came near