

be the consequence to other parties, it is incumbent upon this Court to decide the question, according to law. To do otherwise would be a breach of its duty, and the violation of a solemn oath; and an error, in this respect, would be as much an object of appeal as any other grievance.

The droits, or rights, of the Lord High Admiral were granted by his patent, and established by prescription, but they were accurately defined by the orders in council in the year 1666. The present ship and cargo are claimed under the second article of those orders. "That all enemies ships and goods casually met at sea, and seized by any vessel not commissioned, do belong to the Lord High Admiral." Three things are here required, that the ship and goods shall belong to the enemy, that they shall be casually met at sea, and that they shall be seized by a vessel not commissioned. If these three facts are proved by evidence this ship and cargo must be condemned to his Majesty as droits of Admiralty.

War was declared upon the 13th of October, and this capture was made upon the 17th of that month. It was taken not in port but upon the high seas. Under whatever title therefore this seizure was made, the ship and cargo were at the time of seizure enemies property.

The two first requisites are therefore clearly proved, and the only question which can be raised as respects the other part of the Article, that the seizure must be made by a non commissioned vessel.

This case, in another point of view, has already undergone an examination, and has been decided upon by the court, so far as respects the title of the captor to the prize. But that decision rested upon different grounds and by no means precludes the present question. The subject of enquiry there, was whether this was such a vessel as is included within the words of his Majesty's proclamation for distribution; the present question is whether it is so commissioned as to oust the Lord High Admiral of his droits.

If this vessel was entirely without a commission, if she had no commission against the United States, or her commission was not granted by a competent authority she is equally a non-commissioned vessel.

This vessel had a letter of marque against France but it is a decided point, that notwithstanding such commission without a letter of marque against the United States, she was, as to American captures, a non-commissioned vessel.

It is admitted that no warrant had been transmitted from the Lords of the Admiralty, by the authority of his Majesty's commission under the great seal, to issue letters of marque against the United States; though such warrant has since been sent.

But it has been alledged on behalf of his Majesty that this vessel was commissioned, by the Prince Regent's order in council of the 31st July 1812, or by an instrument under the seal of this Province,