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ALIEN ENEMIES BY OPERATION OF LAW.

BY A. P. GILMOUR.

With the probability of trouble with Spain, growing out of the Alliance incident, and the possibility of a war with England, in the event of her interference with South American affairs in open disregard of the Monroe Doctrine, confronting us, the writer has thought that it might be instructive as well as interesting to investigate somewhat, in the course of this thesis, the subject of Alien Enemies—and more especially the anomalous class entitled in the books "*Alien Enemies by Operation of Law.*"

The limits of this article will necessarily preclude any but the most general consideration of the subject. The writer will hold himself fortunate if he succeeds in pointing out the broad principles enunciated, and the main conclusions that have been finally reached in the discussion of this vexed question.

According to Vattel, all the subjects or citizens of two states at war with one another are enemies, and continue enemies wherever they may happen to be.

Law of Nations, Book III, Chapter V, Sections 70 and 71.

Alien Enemies are of two kinds:

1. *Actual, or Alien Enemies in Fact.*
2. *Constructive, or Alien Enemies by Operation of Law.*

Those persons dwelling in a country at war with a nation to which they owe allegiance are *Actual Alien Enemies*. At common law they possessed "no rights, no privileges, unless by the king's special favor, during the time of war."

Blackstone—Commentaries, Book I, Chapter 10.

The Actual Alien Enemies were at first regarded and treated as prisoners of war, or held as hostages, while their property situated within the country was liable to confiscation. The advance of civilization and

the extension of more humane views as to the manner in which warfare should be conducted have modified the treatment accorded to the citizens or subjects of one belligerent power, resident within the territory of the other belligerent.

It would prove interesting to trace and examine the steps by which the modern rules have been reached, but it is intended in this article to confine the discussion to the second branch of the subject of Alien Enemies, namely, *Constructive Alien Enemies*, or those persons who are invested with the character of *Alien Enemies by Operation of Law*.

This second classification was apparently unknown to the Common Law. Within the present century, however, numerous and interesting questions have arisen in connection therewith. Strange to say, it has fallen, in large numbers, to the lot of American Jurists and American tribunals to enunciate and lay down the rules on this important subject—rules not only recognized in this country, but throughout the civilized world as settled principles of International Law.

The laudable distinction and authority gained in this field by American jurists may justly appear to the patriotic pride of every American student of the vexed subject of International Law.

Paradoxical as it may seem, an *Alien Enemy by Operation of Law* may, in some cases, actually have thought and intended himself to be a most loyal citizen of the country which brands him as hostile.

The decisions in some of the cases seem, at first blush, unjustly severe. A more careful persual however, may tend to convince the student that such decisions are based on justice and equity, or, at least, are called for in the interests of self-preservation, and for the purpose of crippling the opposing belligerent.

THE RAPID, 8 Cranch 155. (1814).

The case of *The Rapid* was the first case after the organization of the United States Supreme Court, in which that tribunal was called upon "to assert the rights of war against the property of a citizen."

The main facts in the case were as follows:

An American, named Harrison, purchased goods in England some time previous to the outbreak of the war of 1812 between the United States and Great Britain. The goods were shipped across the Atlantic and deposited on an Island belonging to the English, lying between Nova Scotia and the United States. After the declaration of war, Harrison chartered *The Rapid* in Massachusetts, and despatched her to bring away his property. On the return trip the vessel was captured by an American privateer, taken into port and condemned for trading with

the enemy. An appeal was taken from the Circuit Court for the District of Massachusetts to the Supreme Court of the United States.

Justice Johnson, in delivering the opinion of the Supreme Court, said: "Everything that issues from a hostile country is, prima facie, the property of the enemy; and it is incumbent on the plaintiff to support the negative of the proposition. But if the claimant be a citizen or an ally, at the same time that he makes out his interest, he confesses the commission of an offense, which under the well known rule of the civil law deprives him of his right to prosecute his claim."

The contention of the claimant that his act was not trading, in the eyes of the prize law, of such a nature as to render his property liable to capture and condemnation, was met by the statement that "negotiation or contract has no necessary connection with the offense;" that "intercourse (between the two belligerent countries) is the offence against which the operation of the rule is directed."

The court at this time begs the question as to whether a citizen may return with his property to his own country on the breaking out of hostilities, but decides unequivocally that a citizen has not the right to leave his country for the purpose of bringing home property from an enemy country.

In affirming the decision of the prize court Justice Johnson concludes:

"We are aware that there may exist considerable hardship in this case; the owners, both of vessel and cargo, may have been unconscious that they were violating the duties which a state of war imposed upon them. It does not appear that they meant a daring violation either of the laws or belligerent rights of their country. But it is the unenvied province of this court to be directed by the head and not the heart. In deciding upon the principles that must define the rights and duties of the citizen and direct the future decisions of justice, no latitude is left for the exercise of feeling."

The principles settled in the case of *The Rapid* were applied and extended subsequently in quite a number of cases that arose out of the war of 1812.

THE ALEXANDER, 8 Cranch 169, (1814).

The case of *The Alexander* was the next to come before the Supreme Court for determination.

The facts were as follows:—

The owners of *The Alexander* were citizens of the United States. While their vessel was on the voyage from Naples to the United States it was learned that war had broken out between the United States and

England. As the vessel had a British license to carry the cargo from Naples to England, she altered her course for England, was captured by the British, taken into an Irish port and libelled, but acquitted. After several months detention and the disposal of the cargo, a return cargo was purchased in England, and the vessel sailed for the United States. On the way she fell into the hands of an American privateer, was taken into port and condemned to the captors. Case appealed to the United States Supreme Court.

Chief Justice Marshall delivered the opinion of the Supreme Court.

While holding that the rules laid down in the case of *The Rapid* control in this case also, he said that the conduct of *The Alexander* was more flagrant than that of *The Rapid*, since "in open sea, unprescribed by any peculiar danger, with a full knowledge of the war, she changes her course and seeks an enemy's port. If such an act could be justified it would be vain to prohibit trade with the enemy." The sentence of the lower court was affirmed with costs.

In both of the above cases the fact that war had broken out was known before the vessels departed on the voyages upon which they were captured. This was likewise known in the cases of *The Julia*, 8 Cranch 181; *The Aurora*, 8 Cranch 203; and *The Hiram*, 8 Cranch 444.

These last cases were further aggravated, however, by the fact that the vessels in question were trading under licenses from the adverse belligerent. Condemnation as lawful prize, in case of capture, would naturally be expected under such circumstances.

In the case we are next to consider, however, the fact that war had been declared was not known at the time the vessel sailed. This was the famous case of

THE VENUS, 8 Cranch 253, (1814).

In this case the Supreme Court of the United States was divided against itself, the learned Chief Justice Marshall being on the side of the minority.

The claimants in the case were five, and although natives of Great Britain, they had all become naturalized citizens of the United States. Subsequently, but many years prior to the war of 1812, four of them returned to England, took up their residence there, and carried on a commercial trade between the United States and Great Britain.

On the 4th of July 1812, *The Venus* sailed from Liverpool to New York with a cargo belonging to the respective claimants. At the time of sailing the fact that war had been declared by the United States was not, nor could have been, known.

On August 6th, 1812, *The Venus* was captured by the American privateer *Dolphin*, sent into port and libelled in the District Court of Massachusetts. After various decrees of the District and Circuit Courts ordering restitution in part to some of the claimants, while denying it to others, the case was at last brought before the United States Supreme Court for final adjudication. There the decision of the point called forth exhaustive, albeit, conflicting opinions from Justice Washington and Chief Justice Marshall. The majority opinion was delivered by the former.

It was decreed in accordance therewith, that the entire cargo of *The Venus* should go to the captors, and that the vessel itself should be condemned "the one-half thereof to the captors, the other half to the United States."

In reaching this sweeping conclusion Justice Washington appeals to Vattel, Grotius, and the English prize cases for support. The great point at issue in this case he holds to be "Whether the property of these claimants who were settled in Great Britain, and engaged in the commerce of that country, shipped before they had knowledge of the war, but which was captured after the declaration of war by an American cruiser, ought to be condemned as lawful prize."

As the fact that the claimants had acquired a right of domicil in England at the time war was declared by the United States was not controverted, only two questions of law, according to Justice Washington require to be considered. They are, to wit:

1. "By what means and to what extent a national character may be impressed upon a person, different from that which permanent allegiance gives him?"

2. "What are the legal consequences to which this acquired character may expose him, in the event of a war taking place between the country of his residence and the country of his birth, or in which he has been naturalized?"

In answering the first, Justice Washington refers to the distinction drawn by Vattel, between persons temporarily residing in a country and those domiciled therein. The latter, although regarded as citizens of an inferior order from the native citizens, are nevertheless the subjects of and united to the new society. They can acquire such domicil not only by express declaration, but also tacitly.

VATTEL,—Law of Nations, 92, 93.

Grotius while not employing the word *domicil*, which is comparatively modern, also distinguishes clearly between these two classes.

Likewise the English courts, Common Law as well as Prize, declare that "whilst an Englishman or a neutral resides in a hostile country, he is the subject of the country, and is to be considered (even by his own or native country in the former case) as having a hostile character impressed upon him." According to the rules laid down by these courts, "a person who removes to a foreign country, settles himself there, and engages in the trade of the foreign country, furnishes, by these acts, such evidence of an intention permanently to reside there, as to stamp him with the national character of the state where he resides."

No matter how short a time a person may have resided in the hostile country, if he went thither with the intention of remaining permanently (*animo manendi*), or even for an indefinite time, he acquires a domicile in the hostile country and is presumed to be standing in a hostile relation to his own country.

The above rules Justice Washington indorses and regards as founded in reason and justice.

The second question, as to the consequences resulting from such an acquired domicile in case of war is next considered.

Justice Washington asserts that, while a citizen of one belligerent, resident in the territory of the other, cannot in the strict sense of the word, render himself an enemy, contrary to his permanent allegiance, nevertheless, "he is deemed such with reference to the seizure of so much of his property concerned in the trade of the enemy as is connected with his residence."

The reason for this rule is said to be that such property and the owner also, are found adhering to the enemy.

While granting that the nature of the character acquired by residents is merely adventitious, and can be thrown off at any time, Justice Washington nevertheless contends that until this character has been unequivocally discarded, its possessor must be bound by all the consequences attaching to it. Any other view would, in his judgment, enable an astute trader to "parry the belligerent rights of both countries," by avowing his intention to remain where he was domiciled, or to return to his native country, according as either might be required by the fortune of war. Justice Washington very pertinently inquires: "And is it not proper that the courts of a belligerent nation should deny to any person the right to use a character so equivocal, as to put it in his power to claim whichever may best suit his purpose, when it is called in question?"

That time should be given to a citizen of one country, "surprised in the country where he was domiciled by a declaration of war," to elect to either stay where he is or to return to his own country, is a doctrine which seems to Justice Washington, "as unfounded in reason and justice

as it clearly is in law." He declares that to permit such "would apply the doctrine of relation to cases where the party claiming the benefit of it may gain all and lose nothing. If he, after the capture, should find it to his interest to remain where he is domiciled, his property embarked before his election was made is safe; and if he finds it best to return, it is safe of course. It is safe whether he goes or stays." Such a doctrine, Justice Washington concludes, would not only be contradictory in results; but opposed to all precedent and principle.

And so, by the above train of reasoning, the majority of the court decided in favor of the condemnation of *The Venus* and her cargo.

Justice Story concurred in toto with the opinion given by Justice Washington.

On the other hand, the Chief Justice, the illustrious John Marshall, of Virginia, in a lengthy and most careful opinion, arrives at a conclusion very different from that reached by the majority of the court. On his side Justice Livingston arrayed himself also.

The opinion of Chief Justice Marshall may fairly be regarded as presenting the equitable side of the case. This of Justice Washington is, perhaps, the more rigidly in accord with the claims of justice—but justice untempered with mercy.

The Chief Justice entirely concurs with Justice Washington in holding that a hostile character attaches to goods and property of "an American citizen continuing, after the declaration of war, to reside and trade in the country of the enemy." That one thus resident, however, whose property has been captured before the fact of war having been declared was, or could be, known, should not be permitted to show in defense a bona fide intention to leave his acquired domicile and return to his own country, is, the Chief Justice holds, a doctrine repugnant to common sense and justice.

This view of the case Chief Justice Marshall proceeds to strengthen by elaborate quotations from authorities on International Law, and by the citation and discussion of a formidable array of English prize cases.

To the writer of this article, the reasoning of the Chief Justice and the arguments he adduces seem, on the whole, clearer and more conclusive than those advanced by Justice Washington. However, while the opinion of the former may seem more *equitable*, as before mentioned, nevertheless it would perhaps, prove inexpedient and unjust in the long run if it was allowed as law.

According to the view entertained by Chief Justice Marshall, an American citizen who has acquired a foreign commercial domicile is not "under the British authorities concluded, by his residence and trading in time of peace, from averring and proving an intention to change his

domicil on the breaking out of war." Nor does the Chief Justice see how "mischief or inconvenience can result from the establishment of this principle. Its operation is confined to property shipped before knowledge of the war. If shipped afterwards it is clearly liable to condemnation, unless it be protected by the principle that it is but the withdrawing of funds. Being confined to shipments made before the knowledge of the war, the evidence of an intention to change or to continue a residence in the country of an enemy must be speedily given. And a continuance of trade after the war * * * * would fix the national character and the domicil previously acquired."

The sense of justice of the Chief Justice revolts from a principle that would brand as hostile an innocent citizen resident abroad whom "not even a return to his native country can rescue, from that character, and from confiscation of property shipped in time of real or supposed peace."

He would test the claimants in this case by their conduct after they became apprised of the fact that war had been declared. If they made immediate efforts to return to the United States, and subsequently did so, their claim to restitution he would affirm. If they did not, then the Chief Justice would heartily concur with the court in the decree of condemnation.

Such was the renowned case of *The Venus*. On this decision hangs subsequently much of the law and the Prophets concerning Alien Enemies by Operation of Law.

In the case of *The Merrimack*, 8 Cranch 317, certain goods had been bought by British merchants before the outbreak of the war of 1812, in compliance with the orders of certain American merchants. The goods were shipped in good faith to the agent of the British merchants in the United States, who was an American, "on account and risk of an American citizen."

A majority of the United States Supreme Court held that at the time of the shipment the goods were vested in American citizens and were not liable to condemnation, notwithstanding the fact that when the vessel left England it was known that war had been declared by the United States.

THE FRANCES, 8 Cranch 335.

Another of the numerous prize cases which the war of 1812 gave rise to was the case of *The Frances*.

The claimant was a native-born Scotchman, but had become a naturalized citizen of the United States. Some nine years prior to the war of 1812 he removed to Scotland for the purpose of trade, but with the intention of returning to the United States. A month after the

war had been declared by the United States against Great Britain the claimant John Thompson, despatched the ship *Frances*, with a cargo of British goods, consigned to various persons in the United States. Before reaching her destination *The Frances* was captured by an American privateer, carried into port and libelled. The claim by the consignee resident in the United States, to two-thirds of the cargo, was allowed in the lower court, and acquiesced in by the captors. The claim of John Thompson to the remaining one-third was refused. From this sentence he appealed to the United States Court. The claimant, Thompson showed that he had remained in Scotland after the outbreak of hostilities merely for the purpose of winding up a complicated business; that he engaged with the enemy in no new commercial transactions; and did in fact return to the United States about a year after the beginning of the war. Notwithstanding the above facts, the Supreme Court affirmed the sentence of condemnation pronounced in the Circuit Court as to the claim of Thompson.

The learned Chief Justice in giving the opinion which confirmed the opinion of the lower court, said that the rights of the claimant depended entirely upon his national commercial character.

It was decided that the opinion rendered in the case of *The Venus* settled this point. In accordance therewith the claimant was to be considered as having gained a domicile in his native country * * * * and his goods captured after the declaration of war, were liable to condemnation as lawful prize.

The cases of *The Saint Lawrence*, 8 Cranch 434, *The Hiram*, 8 Cranch 444 and *The Joseph*, 8 Cranch 451, also arose out of captures made during the war of 1812.

In the first case the confiscation as prize of war of an American vessel which had sailed to Great Britain after learning of the declaration of war by the United States, and which was captured on its return voyage with a cargo consisting chiefly of enemy's goods, was held to be valid.

The hostile character of the claimant was more openly apparent in the case of *The Hiram*. The owner was an American citizen. His vessel was however, sailing on a voyage to Lisbon, under a British license or protection. The supercargo was moreover directed to sell the cargo at Lisbon, if this could be done advantageously, and remit the proceeds to England. Vessels and cargo were both condemned to the captors as prize of war.

The case of *The Joseph* presented many points of resemblance to that of *The Hiram*. The owners of *The Joseph* were Americans: their vessel had been engaged in trade with Great Britain after the declara-

tion of war was known. In May 1813, she sailed for the United States in ballast under a British license. She was captured off Boston in July, of the same year.

The decrees of the Circuit Court condemning the vessel to the captors was affirmed by the United States Supreme Court.

The Friendschaft, 3 Wheaton 14 and 4 Wheaton 105. Some interesting points were raised in the case of *The Friendschaft*, which came before the United States Supreme Court in 1818 and 1819 respectively.

Shipment of goods was made in 1814, at London, by the firm of Moreira, Viera and Machado, of London, on account and risk of the firm. The goods were sent to one Moreira, a native Portuguese domiciled in Lisbon. Capture by the American privateer *Herald*, occurred before the vessel reached Lisbon. She was subsequently carried into a port in North Carolina and libelled. The decision of the prize court condemning as prize of war, the shares of the two partners domiciled in London was not appealed from.

Moreira, however, appealed to the Supreme Court of the United States from the decision condemning his share also.

The Supreme Court decided that, although Moreira had clearly shown his proprietary interest in one-third of the goods, and also that his personal domicil was in Lisbon, nevertheless he must abide his fate as decided by the lower court, for the Supreme Court asserted it as being a mixim that "the property of a house established in the enemy's country, is condemnable as prize, whatever may be the personal domicil of the partners."

As to a portion of the cargo claimed by one Joseph Winn, the Supreme Court affirmed the decree of the lower court according restitution. The claimant Winn, although an Englishman by birth, had for many years prior to the capture of *The Friendschaft* had his fixed domicil in Lisbon. In 1814 he went to London on a business trip, but by affidavit he swore that he was still a domiciled Portuguese subject; that he intended to return to Lisbon, and that his business was carried on by clerks until his return. The Supreme Court held that under such circumstances the mere temporary return, on a business trip, of a merchant to his native country who had his domicil in a neutral country at the time of the capture of goods in question, did not cause his native character to revert, so as to render his property liable to confiscation. The neutral domicil in such a case, is regarded as still continuing.

THE PRIZE CASES—2 Black 635.

As was the case in the war of 1812, so the Civil War of 1861-1865

was fruitful in cases involving the rights of citizens and others carrying on trade with the belligerents.

The doctrine laid down in the cases above discussed were again called into requisition in the cases of *The Brig Amy Warwick*, *The Schooner Crenshaw*, *The Barque Hiawatha*, and *The Schooner Brilliante*.

All four cases were decided at the same time, at the December term, 1862; and included under the head of "*The Prize Cases*."

With the exception of *The Amy Warwick* which was captured on the high seas, the vessels were taken by the United States while they were attempting to run the blockade of the Southern ports. Omitting one or two minor claims which were allowed, all four vessels and their cargoes were condemned in accordance with the principles already enunciated and applied by the United States Supreme Court.

In the case of *The Amy Warwick* all the claimants were, at the time of the vessel's capture, residents of Richmond, Virginia, and engaged in business there. The court decided that the case presented no question but that of enemies' property, and held that the vessel and her cargo were properly condemned as being such.

The judgment of the lower court in the case of *The Hiawatha*, proceeded upon the ground that the claimants shipped goods and despatched their vessel after they had notice of the blockade of the Southern ports. It was said to be a well-settled rule of International Law that a vessel in a blockaded port is presumed to have notice of the commencement of the blockade. *The Hiawatha* failed to make her departure during the period allowed her for that purpose, and attempted to do so afterwards. She was captured off the Virginia coast, in Hampton Roads. The decree of the lower court condemning the vessel and cargo was affirmed by the United States Supreme Court.

The Brilliante was a Mexican vessel. Her cargo belonged to Mexican citizens. Although informed of the blockade established on the Southern Coast, she made an ineffectual attempt to run the blockade at the end of June, 1861, with a cargo taken on board at New Orleans. Capture and condemnation followed in short order. Here, as in the other two cases, the judgment of the prize court was ruthlessly, but justly, affirmed.

The Supreme Court in rendering the decision said that although the vessel had been fairly warned of the blockade, she had, after such warning successfully evaded the blockade squadron, and was attempting to do so again when she fell into the hands of her captors.

The case of *The Crenshaw* was held to present the single question of "enemies' property." Vessel and cargo were almost entirely owned by Virginians, nearly all, residents of Richmond, Virginia. A portion of the cargo of tobacco, which had been purchased before the war broke

out by citizens and residents of New York, with their own means, which were then in Richmond, was restored. As to the rest the court decided that "the vessel and such parts of her cargo as were within the description of enemies' property were rightfully condemned."

Justice Nelson in an elaborate opinion, concurred in by Chief Justice Taney and Justices Catron and Clifford, dissented from the majority opinion in the case of *The Hiawatha*, and "in all cases before us in which the capture occurred before the 13th of July, 1861, for the breach of blockade, or as enemies' property." Justice Nelson contended that in such cases the capture was "illegal and void, and that the decrees of condemnation should be reversed and the vessel and her cargo restored."

According to Justice Nelson, it appeared very clear in the case of *The Hiawatha*, that "there was no intention on the part of the master to break the blockade, and that the seizure under the circumstances was not warranted."

The cases heretofore considered have all arisen out of captures at sea. In the following case, however, the capture took place on land. The case is that of *United States vs. Alexander*, 2 Wallace 404. It is very generally known as the case of "*Mrs. Alexander's Cotton*."

The dispute arose out of the capture by the Federal troops, of seventy-five bales of cotton belonging to Mrs. Alexander. The property was seized on the Louisiana plantation of the claimant in 1864.

The territory within which the plantation was situated had, for eight weeks, been under Federal control. In 1864 a party was sent out from a Federal gunboat, who landed on the plantation and seized the cotton in question, and sent it to Illinois where it was libelled as a prize of war. A decree of the circuit court, however, restored the cotton to the claimant. An appeal was taken on behalf of the United States and the captors to the United States Supreme Court.

The Supreme Court in reversing the judgment of the lower court held:

(1) That although the capture had been made on land, and was therefore not a maritime prize, the property in question was nevertheless enemies' property and liable to capture and confiscation.

(2) That the cotton was one of the main sinews of the Southern Confederacy.

(3) That the act of Congress of July 12th, 1862, excluded property on land from the category of prize for the benefit of the captors.

(4) That the evidence in relation to the previous personal loyalty of the claimant was conflicting.

(5) That in the present case the capture was justified by the peculiar character of the property by legislation, and by public policy.

The court finally decreed that the proceeds of the sale of cotton should be turned over to the United States Treasury Department, "in order that the claimant when the rebellion is suppressed, or she has been able to leave the rebel region, may have opportunity to bring suit in the Court of Claims, and on making proof (of having in fact maintained a loyal adhesion to the Union) required by act of Congress (March 3, 1863) have the proper decree."

THE GRAY JACKET, 5 Wheaton 342.

The claim by one that he was loyal to the Union also failed to save the property of the claimant in the case of *The Gray Jacket*.

The claimant in his final affidavit set up an entirely different state of facts from that which appeared in the affidavit in preparatorio.

The Gray Jacket was captured by *The Kennebec*, of the United States Navy, off Mobile Bay, in 1863, while attempting to run the blockade. On his first examination the claimant, Maher, stated that he was a citizen of Alabama and owed his allegiance to that state. In his final affidavit, however, he averred that he was and always had been a good and loyal citizen of the United States; that he never had sympathized with nor given any aid to the rebellion; that he had built his vessel, *The Gray Jacket*, to enable him to get away from the rebellious district in which he was, with as much of his property as was possible. He further averred that the cargo of cotton was all his own, but that the Confederate Government had compelled him to agree that one-half of it should be taken on account of that government, and also to concur in the provisions of the contract with the rebel military agent; otherwise he would not have been allowed to depart.

The claimant solemnly asserted, however, that he intended when he reached Havana, to claim all the property as his own, and pocket the proceeds himself.

The lower court was deaf to the strong assertion of patriotic intention—which was certainly questionable—of the claimant, and condemned vessel and cargo as prize of war.

The Supreme Court put its stamp of approval on this decision, adding that "the case before us as we view it, has no redeeming feature—the vessel and her cargo were properly condemned as enemy's property, and for breach of the blockade. There is nothing persuasive to a different conclusion."

THE WILLIAM BAGALEY, 5 Wallace 377.

In the case of *The William Bagaley* there seems to have been no

question as to the loyalty of the claimant. In some respects the case appears to be a very hard one.

Joshua Bragdon at the breaking out of the Civil War was a member of an Alabama trading firm. He was not a citizen of any of the States in rebellion, but "was and long had been a resident and loyal citizen of the State of Indiana." At no time did he aid or abet the rebellion. There was no evidence, however, that he attempted to sell or withdraw his property from the rebellious regions. About a year after the outbreak of hostilities the Confederate government by decree confiscated his interest in the firm. Soon after, without his knowledge or sanction, the other partners of the firm, all residents of Alabama, loaded *The William Bagaley*, a ship belonging to the firm and attempted to run the blockade. The ship was captured by a Federal cruiser while sailing under papers, flag, officers and crew of the Confederate States. Condemnation of the entire cargo and vessel followed.

Bragdon interposed a claim for restitution of one-sixth of the cargo, as being his share, and not subject to condemnation.

The prize court overruled his claim, whereupon he appealed to the United States Supreme Court. The Supreme Court however sustained the decree of the lower court.

In so doing it held:—

(1) That ships in times of war are impressed with the character of the government from which their documents issue, and under whose flag and papers they sail.

(2) "That, the share of a citizen sailing under an enemy's flag and papers, and who has had ample time and every facility to withdraw his effects from the enemy's country, or dispose of such interests as could not be removed, but who has not attempted to withdraw or dispose of them, is accordingly subject to capture and condemnation, equally with the shares of enemies in the same ship."

(3) "Where the cargo and the ship are owned by the same person the cargo follows the fate of the ship."

It was also said that the war operates to dissolve a partnership between citizens of two belligerents, and that it is incumbent upon the loyal citizen to dispose of, or withdraw, his interest in the hostile firm. Failure to do so is at his peril.

The general principles already mentioned in many of the cases above treated were called in to decide the case of *The Flying Scud*, (6 Wheaton 263) and *The Adela*, (6 Wheaton 266.)

In the former case, *The Flying Scud*, a British vessel, left Nassau in 1863, and successfully carried a cargo of munitions of war, etc., to a port in Texas where she discharged them. The vessel then went to

Matamoras, in Mexico, at the mouth of the Rio Grande. There she was chartered by certain Spaniards and Mexicans to carry a cargo of cotton to Havana. The vessel was captured by an American privateer, and the cargo and vessel condemned as prize.

As there was no appeal by the owners of the vessel, the only question that came before the United States Supreme Court was in regard to the confiscation of the cotton.

The Supreme Court held that so much of the cargo as belonged to bona fide neutrals, resident in a neutral country and shipped from such neutral country, should be restored with costs, such owners not having had any ownership or connection with the "outward voyage" of the vessel from Nassau to the port in Texas, and there being no proof that the purpose of the neutral shippers were unlawful. A portion of the cargo, however, shipped by Mexicans resident in Texas and doing business there, was held to fall within the designation of "enemies' property," and to have been rightfully condemned.

In the case of *The Adela*, the vessel was captured towards the end of the Civil War, by the United States Steamer, *Quaker City*, off the island of Great Abaco, belonging to Great Britain. The ground for condemnation was the attempted breach of the blockade. The ship and cargo were apparently neutral property. On the behalf of *The Adela*, it was claimed that the capture was in British waters. The vessel was chiefly loaded with rifles and contraband of war. The chief officer said the destination of the vessel was Charleston, South Carolina. Letters addressed to the blockaded ports, among them Charleston, corroborated the testimony of the chief officer of *The Adela*.

The Supreme Court being satisfied of the intention of the vessel to run the blockade, affirmed the decree of condemnation passed by the District Court.

As to the contention that *The Adela* was in neutral waters at the time of the capture (which point was disputed) the Supreme Court held, that, "neither an enemy, nor a neutral acting on the part of an enemy, can demand restitution on the sole ground of capture in neutral waters." In support of this ruling the case of *The Sir W. Peel*, (5 Wallace 535) was cited and the decision therein rendered, affirmed. At most, a capture under such conditions could but furnish a ground for a claim of apology or indemnity by the country whose territory had been violated.

The discussion of this vexed, but most important subject has already occupied more space than the writer originally intended. One other case, however, will be touched upon before closing this article.

In the case of *Miller vs. United States*, (II Wallace 268) the point at issue was as to the validity of a forfeiture, under confiscation acts of

Congress passed during the Civil War, of stock in two Michigan corporations.

The stock in question was owned by a Virginian who had at various times since July, 1862 acted as an officer both in the army and navy of the Confederacy.

The majority of the United States Supreme Court, in an opinion delivered by Justice Strong, joined in sustaining the decisions of the District and Circuit Courts in favor of the condemnation of the stock.

The majority decision held that in the Civil War "the United States had belligerent as well as sovereign rights." From this it resulted that the United States had "a right to confiscate the property of public enemies wherever found, and also a right to punish offences against her sovereignty."

It was also decided that 'rebels' were to be regarded and treated as public enemies and also their aiders and abettors, even though not resident in the enemy's territory.

The power of Congress to determine what property of public enemies should be confiscated was sustained. The decision was by no means unanimous, as Justice Field, Clifford and Davis dissented from the opinion of the majority of the court.

As was said at the beginning of this discussion, the principles declared and the rules laid down in the cases treated in the course of this paper are recognized throughout the civilized world.

In the not impossible, perhaps probable, event of a war in the near future, growing out of the violation of the rights of American vessels on the high seas, or the flagrant disregard of the Monroe Doctrine, we shall doubtless see the able decisions of the United States Supreme Court, rendered during and since the war of 1812, and the stormy period of the Civil War, followed and affirmed in a number of subsequent cases involving the rights and liabilities of *Alien Enemies by Operation of Law*.

THE FOREIGN CORPORATION, ITS RIGHTS AND LIABILITIES IN KENTUCKY.

(BY RYLAND C. MUSICK, OF THE JACKSON, KENTUCKY BAR.)

Any foreign corporation, except Insurance Companies, or agent of employe of such corporation, who shall transact, carry on or conduct any business in Kentucky for such foreign corporation and such foreign cor-