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**The Rapid**

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**SooperKanoon Citation** : sooperkanoon.com/78622

**Court** : US Supreme Court

**Decided On :** 1814

**Appeal No.** : 12 U.S. 155

**Appellant** : The Rapid

**Judgement** :

The Rapid - 12 U.S. 155 (1814)
U.S. Supreme Court The Rapid, 12 U.S. 8 Cranch 155 155 (1814)

**The Rapid**

**12 U.S. (8 Cranch) 155**

*APPEAL FROM THE CIRCUIT COURT*

*FOR THE DISTRICT OF MASSACHUSETTS*

## SYLLABUS

After a declaration of war, an American citizen cannot lawfully send a vessel to the enemy's country to bring away his property.

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 a well known rule of the civil law, deprives him of his right to prosecute his claim.

The law of prize is part of the law of nations. In it a hostile character is attached to trade independently of the character of the trader who pursues or directs it. Condemnation is equally the fate of the property of the belligerent and of property found engaged in anti-neutral trade.

The trading with an enemy condemned by the prize law does not simply consist in negotiation or contract. Intercourse, inconsistent with actual hostility, is the offense against which the operation of the rule is directed.

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The material facts in the case were these:

Jabez Harrison, a native American citizen, the claimant and appellant in this case, had purchased a quantity of English goods in England before the declaration of war by the United States against that country and deposited them on a small island belonging to the English, called Indian Island and situated near the line between Nova Scotia and the United States. Upon the breaking out of the war, Harrison's agents in Boston hired the *Rapid,* a vessel licensed and enrolled for the cod fishery, to proceed to the place of deposit and bring away the goods. The *Rapid* accordingly sailed from Boston on 3 July, 1812, with Harrison, the claimant, on board, proceeded to Eastport, where Harrison was left, and from thence, agreeably to Harrison's orders, to Indian Island, where the cargo in question was taken on board. On 8 July, while on her return, she was captured by the *Jefferson* privateer on the high seas and brought into Salem. The goods, being libeled as prize, and claimed by Harrison as his property, were condemned in the Circuit Court of Massachusetts to the captors on the ground that, by "trading with the enemy," they had acquired the character of enemies' property.

A claim was also interposed by the United States on the ground of a violation by the *Rapid* of the nonintercourse act. This claim was also rejected. From the decree of the circuit court, the United States and Harrison appealed.

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JOHNSON, J. delivered the opinion of the Court as follows:

This capture was made on the high seas about a month after the declaration of war. The claimant, Harrison, had purchased a quantity of English goods in England, "a long time," to use his own language, before the declaration of war, and deposited them on a small island called Indian Island, near to the line between Nova Scotia and these states. Upon the breaking out of the war, his agents in Boston hired the *Rapid,* a licensed vessel in the cod fishery, to proceed to the place of deposit and bring away these goods. On her return, she was captured by the *Jefferson* privateer, and was condemned for trading with the enemy's country.

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On the argument it was contended in behalf of the appellant that this was not a "trading" within the meaning of the cases cited to support the condemnation; that on the breaking out of a war, every citizen had a right, and it was the interest of the community to permit her citizens, to withdraw property lying in an enemy's country and purchased before the war; finally, that neither the declaration of war nor the commission of the privateer authorized the capture of this vessel and cargo, as they were in fact American property.

It is understood that the claim of the United States for the forfeiture is not now interposed. The Court therefore enters upon this consideration unembarrassed by a claim which would otherwise ride over every question now before us.

This is the first case since its organization in which this Court has been called upon to assert the rights of war against the property of a citizen. It is with extreme hesitation and under a deep sense of the delicacy of the duty which we are called

upon to discharge that we proceed to adjudge the forfeiture of private right upon principles of public law highly penal in their nature and unfortunately too little understood.

But a new state of things has occurred -- a new character has been assumed by this nation which involves it in new relations and confers on it new rights; which imposes a new class of obligations on our citizens and subjects them to new penalties.

The nature and consequences of a state of war must direct us to the conclusions which we are to form on this case.

On this point there is really no difference of opinion among jurists. There can be none among those who will distinguish between what it is in itself and what it ought to be under the influence of a benign morality and the modern practice of civilized nations.

In the state of war, nation is known to nation only by their armed exterior, each threatening the other with conquest or annihilation. The individuals who compose

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the belligerent states exist as to each other in a state of utter occlusion. If they meet, it is only in combat.

War strips man of his social nature; it demands of him the suppression of those sympathies which claim man for a brother, and accustoms the ear of humanity to hear with indifference -- perhaps exultation -- "that thousands have been slain."

These are not the gloomy reveries of the bookman. From the earliest time of which historians have written or poets imagined, the victor conquered but to slay, and slew but to triumph over the body of the vanquished. Even when philosophy had done all that philosophy could do to soften the nature of man, war continued the gladiatorial combat; the vanquished bled wherever caprice pronounced her fiat. To the benign influence of the Christian religion it remained to shed a few faint rays upon the gloom of war -- a feeble light but barely sufficient to disclose it horrors.

Hence, many rules have been introduced into modern warfare at which humanity must rejoice, but which owe their existence altogether to mutual concession and constitute so many voluntary relinquishments of the rights of war. To understand what it is in itself and what it is under the influence of modern practice, we have but too many opportunities of comparing the habits of savage with those of civilized warfare.

On the subject which particularly affects this case, there has been no general relaxation. The universal sense of nations has acknowledged the demoralizing effects that would result from the admission of individual intercourse. The whole nation are embarked in one common bottom, and must be reconciled to submit to one common fate. Every individual of the one nation must acknowledge every individual of the other nation as his own enemy because the enemy of his country. It is not necessary to quote the authorities on this subject; they are numerous, explicit, respectable, and have been ably commented upon in the argument.

But after deciding what is the duty of the citizen, the question occurs what is the consequence of a breach of that duty?

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The law of prize is part of the law of nations. In it, a hostile character is attached to trade independently of the character of the trader who pursues or directs it. Condemnation to the use of the captor is equally the fate of the property of the belligerent and of the property found engaged in anti-neutral trade. But a citizen or ally may be engaged in a hostile trade, and thereby involve his property in the fate of those in whose cause he embarks.

This liability of the property of a citizen to condemnation as prize of war may be likewise accounted for under other considerations. Everything that issues from a hostile country is, *prima facie,* the property of the enemy, and it is incumbent upon the claimant 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 a well known rule of the civil law,

deprives him of his right to prosecute his claim.

This doctrine, however, does not rest upon abstract reason. It is supported by the practice of the most enlightened (perhaps we may say of all) commercial nations. And it affords us full confidence in our decision that we find, upon recurring to the records of the court of appeals in prize cases established during the Revolutionary War, that in various cases it was reasoned upon as the acknowledged law of that court. Certain it is that it was the law of England before the revolution, and therefore constitutes a part of the admiralty and maritime jurisdiction conferred on this Court in pursuance of the Constitution.

After taking this general view of the principal doctrine on this subject, we will consider the points made in behalf of the claimant in this case, and:

1. Whether this was a trading, in the eye of the prize law, such as will subject the property to capture?

The force of the argument on this point depends upon the terms made use of. If by "trading," in prize law, was meant that signification of the term which consists in negotiation or contract, this case would certainly not come under the penalties of the rule. But the object, policy, and spirit of the rule is to cut off all communication or actual



locomotive intercourse between individuals of the belligerent states. Negotiation or contract has therefore no necessary connection with the offense. Intercourse inconsistent with actual hostility is the offense against which the operation of the rule is directed, and by substituting this definition for that of trading with an enemy, an answer is given to this argument.

2. Whether, on the breaking out of a war, the citizen has a right to remove to his own country with his property is a question which we conceive does not arise in this case. This claimant certainly had not a right to leave the United States for the purpose of bringing home his property from an enemy country; much less could he

claim it as a right to bring into this country goods the importation of which was expressly prohibited. As to the claim for the vessel, it is founded on no pretext whatever, for the undertaking, besides being in violation of two laws of the United States, was altogether voluntary and inexcusable. With regard to the importations from Great Britain about this time, it is well known that the forfeiture was released on grounds of policy and a supposed obligation induced by the assurance which had been held out by the American charge d'affaires in England. But this claimant could allege no such excuse.

3. On the third point, we are of opinion that the foregoing observations furnish a sufficient answer.

If the right to capture property thus offending grows out of the state of war, it is enough to support the condemnation in this case that the act of Congress should produce a state of war and that the commission of the privateer should authorize the capture of any property that shall assume the belligerent character.

Such a character we are of opinion this vessel and cargo took upon herself, or at least she is deprived of the right to prove herself otherwise.

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

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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 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.

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