

The William Bagaley

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The William Bagaley - 72 U.S. 377 (1866)

U.S. Supreme Court The William Bagaley, 72 U.S. 5 Wall. 377 377 (1866)

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72 U.S. (5 Wall.) 377

APPEAL FROM THE DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

1. Personal property left in a hostile country by an owner who abandons such country in order to go to the other belligerent, and so to return to his proper allegiance and soil, becomes, unless an effort is made with promptitude to remove it from such country, impressed with its character, and as such liable to the consequences attaching to enemy's property.

2. The presumption of the law of nations is against an owner who suffers such property to continue in the hostile country for much length of time.

3. The effect of war is to dissolve a partnership subsisting between citizens of nations at war, and if the person abandoning the hostile country have had his property in partnership with citizens of the enemy country, it is his duty to dispose of and withdraw his interest in the firm. If he do not, such interest is subject to the rule above stated with regard to individual property.

4. Ships in time of war are bound by the character impressed upon them by the government from which their documents issue and under whose flag and pass they sail. The share of a citizen in a ship sailing under an enemy's flag and papers, and who has had ample time and every facility to withdraw his effects from the enemy country or dispose of such interests as could not be removed, but who has not attempted so to withdraw or dispose of them, is accordingly subject to capture and condemnation equally with the shares of enemies in the same ship. And where the cargo and ship are owned by the same person, the cargo follows the fate of the ship.

5. During the late rebellion, a loyal citizen domiciled at the time it broke out in one of the rebellious states and trading there as a member of a commercial firm abandoned it and removed to a loyal state. He never in any way aided or abetted the rebellion, but there was no evidence that he ever attempted or desired to withdraw his property from the rebellious region. In a year, more or less, after the rebellion broke out, the rebel authorities professed by one of their decrees to confiscate his interest in the firm, and the partners resident in the rebellious states -- *he* having no connection with or knowledge of their action -- loaded a ship which he alleged belonged to his firm when he left it and which, in attempting, under papers, flag, officers, and crew of the Confederate States, to run the blockade established by the United States, two years before, of the Southern coast, was captured by a federal cruiser.

Held that so much time having elapsed after the proclamation and before the confiscation and the capture, without effort on the part of the loyal owner to get it

away from the rebellious region, his share in vessel and cargo was rightly condemned with the shares of the partners in rebellion;

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that the alleged confiscation was no excuse for his not having previously made an effort to withdraw or dispose of his interest in the firm, and that neither his loyal domicil during the rebellion nor, under the circumstances, the confiscation, nor his want of connection with or knowledge of the enterprise, nor all combined, defeated the right of the captors.

6. In proceedings in prize, parties who were not in any way parties to the litigation in the district court and are neither appellants nor appellees cannot come into this Court and be heard as "intervenors."

The steamer *William Bagaley* -- with a register issued at Mobile, June 16, 1863, under the authority of the "Confederate States" and reciting a previous enrollment in 1857 and a present ownership -- "property having changed" -- by Waring and others ("citizens of the Confederate States" and "trustees of association of stockholders)," with a master appointed by these trustees, and bearing the Confederate flag -- sailed from Mobile, July 17, 1863, during the blockade of that port proclaimed April 19, 1861, by the United States, for Havana. Her cargo was of cotton, turpentine &c.; No papers were on board, for "fear of being captured." The "cotton was shipped for the benefit of the owners in Mobile." All the officers and crew were, with one exception, "citizens of the Confederate States." The master had instructions to escape the blockading vessels, but not to resist.

Being perceived by the blockading squadron, she was pursued and, after a brisk chase, captured. Being brought into New Orleans and libeled for condemnation, a claim for one-sixth of the vessel and cargo was interposed by Joshua Bragdon, and of this sixth he prayed restitution.

The facts upon which he grounded his claim were that he was, and for many years had been, a resident of the State of Indiana, a loyal state; that the firm of Cox, Brainerd & Co., of Mobile, Alabama, a rebel state, were the sole owners of the

captured vessel and her cargo, of which firm the claimant had been for several years a member, and owned one-sixth interest in all the property of the co-partnership, which interest

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he had never in any way transferred. That he was and always had been a true and loyal citizen of the United States, and that he had never in any way aided or abetted the rebellion, and after the breaking out of the same had never exercised any act of ownership or control over the property or the captured steamer, and that he had no connection with or knowledge of the unlawful voyage of the steamer which occasioned her capture. That in consequence of his loyalty, the so-called Confederate government seized all his interest and property in said firm of Cox, Brainerd & Co., and by a decree and process of one of her pretended courts, "at some time during the year 1862 -- the exact date not known" -- confiscated the same. That all such acts and proceedings of the insurrectionary government were void, and that the title of the claimant to his property remains unimpaired.

On the trial, these facts were admitted of record by the District Attorney as true. The court dismissed the claim with costs and condemned both vessel and cargo.

No other claim having been interposed in the proceedings in the lower court for any portion of the captured property or its proceeds, the only question presented by the appeal was the legal sufficiency and merit of the claim of Bragdon for his one-sixth.

After the case came into this Court by appeal, however, the owners of the remaining five-sixths filed a petition asking to intervene for *their* interests. Their excuse for not appearing or putting in any claim in the district court, it may be here stated, was that they were residents of a state hostile to the United States, and had therefore no standing in that court; that this disability continued till after the case was removed into this Court by appeal. And they set up as reason for the restitution of their shares to them that since the appeal they had received from the President "a full pardon and amnesty for all offenses by them committed arising

from participation, direct or implied, in the said rebellion."

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

The steamer and cargo were captured as prize of war on the 18th day of July, 1863, and, having been duly libeled and prosecuted as such in the district court, on the 17th day of August following they were both condemned as forfeited to the United States. Monition was duly published, but no one appeared as claimant either for the steamer or cargo. Directions of the decree of condemnation were that the steamer and cargo, after ten days' public notice, should be sold by the marshal, and that the proceeds of the sale should be deposited in the registry of the court for distribution according to law. Return of the marshal shows that the notice was duly given and that the sale was made as directed by the decree. Proceeds of the sale were paid to the marshal, but before the amount was actually deposited in the registry of the court, the appellant filed his petition of intervention, claiming one-sixth of the proceeds upon the ground that he was the true and lawful owner of one-sixth part of the vessel and cargo. Allegations of the petition of intervention were, in substance and effect, as follows:

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1. That the petitioner was and for many years had been a citizen of the State of Indiana; that at the breaking out of the rebellion, he was a member of the firm of Cox, Brainard & Co., at Mobile, Alabama; that the partners of the firm, as such, were the sole owners of the steamer and cargo, and that he had never parted with his share or in any way transferred his interest in the partnership.

2. That the steamer, after the rebellion broke out to the time of the capture, was continually in the waters of the rebellious states, and under the control and management of those engaged in the rebellion, which rendered it impracticable and unlawful for him to proceed to the place where the steamer was or to exercise any control over the steamer or any part of the partnership property.

3. That he was and always had been a true and loyal citizen, that he had never given any aid, encouragement or assistance to the rebellion, and that he had no connection with or knowledge of the unlawful voyage of the steamer on account of which she was condemned as lawful prize.

4. That some court of the Confederate States, so called, at some time in the year 1862 had condemned and confiscated his interest in the partnership, but he averred that the decree was wholly nugatory and void, and that his interest in the steamer and cargo had never been extinguished or destroyed.

Basing his claim upon these allegations of fact, he prayed that he might be paid out of the proceeds of the sale one-sixth of the amount required to be paid into the registry of the court.

Exceptions were filed to the petition of intervention, but they were overruled by the court, and the District Attorney appeared and admitted that all the facts therein alleged were true. Parties were heard as upon an agreed statement, and the district court entered a decree that the intervention and claim of the petitioner be rejected and dismissed, with costs. Appeal was taken by the intervenor from that decree, and he now seeks to reverse it upon the ground that he, as

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owner of one-sixth part of the steamer and cargo, is entitled to one-sixth of the proceeds of the sale.

1. Captors contend that the steamer and cargo were both rightfully condemned as enemy property and also for breach of blockade. Appellant denies the entire proposition as respects his interest in the captured property, and insists that the one-sixth of the same belonging to him cannot properly be condemned on either ground, because he was never domiciled in the rebellious states and because he never employed the property, either actually or constructively, in any illegal trade with the enemy or in any attempt to break the blockade.

Projected voyage of the steamer was from Mobile to Havana, and the master testified that she sailed under the Confederate flag. Proofs show that she left her anchorage in the night time, and that she was captured, as alleged in the libel, after a brisk chase by several of our blockading squadron more than two hundred miles from the port of departure. When captured, she had on board a permanent register, issued at Mobile under Confederate authority, and which described her owners as trustees of a certain association and citizens of the Confederate States.

Testimony of the master showed that the cargo, which consisted of seven hundred bales of cotton, three thousand two hundred staves, and one hundred and twenty-five barrels of turpentine, was consigned to parties in Havana, and that the shipment was for the benefit of owners residing at the home port. Except an informal manifest, the steamer had no papers on board relating to the cargo, and the master testified that she carried none for the consignee "for fear of being captured." He was appointed by the trustees, and he also testified that his instructions were to elude the blockading vessels if possible, but not to resist in case he was unable to escape. Ship's company consisted of thirty men, and all the officers and crew, with one exception, were citizens of the enemy country. Direct admission is made by the master in his testimony that he stole out of the harbor and that the steamer and cargo were captured for breach of

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blockade. Such an admission was hardly necessary to establish the charge, as every fact and circumstance in the case tended to the same conclusion. Five-sixths of the steamer and cargo were confessedly enemy property, and the whole adventure was projected and prosecuted for the benefit of resident enemy owners. None of these facts is controverted by the appellant, but he insists that inasmuch as he was domiciled in a loyal state and had no connection with the adventure or the voyage, his interest cannot properly be held liable to capture.

2. War necessarily interferes with the pursuits of commerce and navigation, as the belligerent parties have a right, under the law of nations, to make prize of the ships, goods, and effects of each other upon the high seas. Property of the enemy,

if at sea, may be captured as prize of war, but the property of a friend cannot be lawfully captured, provided he observes his neutrality. Public war, duly declared or recognized as such by the war-making power, imports a prohibition by the sovereign to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country. [[Footnote 1](#)]

Neutral friends or even citizens who remain in the enemy country after the declaration of war have impressed upon them so much of the character of enemies that trading with them becomes illegal, and all property so acquired is liable to confiscation. [[Footnote 2](#)]

Part-owners of ships are seldom partners in the commercial sense, because no one can become the partner of another without his consent and because if they acquire title by purchase, they usually buy distinct shares at different times and under different conveyances, and even when they are the builders, they usually make separate contributions for the purpose. Generally speaking, they are only tenants in

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common, but the steamer in this case belonged to the partnership, and throughout the rebellion to the time of capture was controlled and managed by the partners in the enemy country. [[Footnote 3](#)]

Even where the part-owners of a ship are tenants in common, the majority in interest appoint the master and control the ship unless they have surrendered that right by agreeing in the choice of a ship's husband as managing owner. [[Footnote 4](#)]

Admiralty however, in certain cases, if no ship's husband has been appointed, will interfere to prevent the majority from employing the ship against the will of the minority without first entering into stipulation to bring back the ship or pay the value of their shares. But the dissenting owners in such a case bear no part of the expenses of the voyage objected to, and are entitled to no part of the profits. Such

are the general rules touching the employment and control of ships; but unless the co-owners agree in the choice of a managing owner or the dissenting minority go into admiralty, the majority in interest control the employment of the ship and appoint the master. [[Footnote 5](#)]

Tenants in common of a ship can only sell their own respective shares, but where the ship belongs to a partnership, one partner may sell the whole ship. [[Footnote 6](#)]

3. Proclamation of blockade was made by the President on the nineteenth day of April, 1861, and on the thirteenth day of July in the same year Congress passed a law authorizing the President to interdict by proclamation all trade and intercourse between the inhabitants of the states in insurrection and the rest of the United States. [[Footnote 7](#)]

Provision of the sixth section of the act is, that after fifteen days from the issuing of such proclamation, "any ship or vessel belonging whole or part to any citizen or inhabitant" of a state or part of a state, whose inhabitants shall

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be so declared to be in insurrection, if found at sea or in the port of any loyal state, may be forfeited. Reference is made to those provisions, as showing that our citizens were duly notified that Congress as well as the President had recognized the undeniable fact that civil war existed between the constitutional government and the Confederate States; and that seasonable notice was given to all whose interests could be affected, and that ample opportunity and every facility were extended to them, which could properly be granted, to enable them to withdraw their effects from the states in rebellion, or to dispose of such interests as in the nature of things could not be removed.

Open war had existed between the belligerents for more than two years before the capture in this case was made, and yet there is not the slightest evidence in the record that the appellant ever attempted or manifested any desire to withdraw his effects in the partnership or to dispose of his interest in the steamer. Effect of the

war was to dissolve the partnership, and the history of that period furnishes plenary evidence that ample time was afforded to every loyal citizen desiring to improve it, to withdraw all such effects and dispose of all such interests. "Partnership with a foreigner," says Maclachlan, "is dissolved by the same event which makes him an alien enemy," and Judge Story says,

"that there is in such cases an utter incompatibility created by operation of law between the partners as to their respective rights, duties, and obligations, both public and private, and therefore that a dissolution must necessarily result therefrom independent of the will or acts of the parties. [[Footnote 8](#)]"

Executory contracts with an alien enemy, or even with a neutral, if they cannot be performed except in the way of commercial intercourse with the enemy, are *ipso facto* dissolved by the declaration of war, which operates to that end and for that purpose with a force equivalent to that of an act of Congress. [[Footnote 9](#)]

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Duty of a citizen when war breaks out, if it be a foreign war and he is abroad, is to return without delay, and if it be a civil war and he is a resident in the rebellious section, he should leave it as soon as practicable and adhere to the regular established government. Domicile in the law of prize becomes an important consideration because every person is to be considered in such proceedings as belonging to that country where he has his domicile, whatever may be his native or adopted country. [[Footnote 10](#)]

4. Personal property, except such as is the produce of the hostile soil, follows as a general rule the rights of the proprietor; but if it is suffered to remain in the hostile country after war breaks out, it becomes impressed with the national character of the belligerent where it is situated. Promptitude is therefore justly required of citizens resident in the enemy country or having personal property there, in changing their domicil, severing those business relations or disposing of their effects as matter of duty to their own government and as tending to weaken the enemy. Presumption of the law of nations is against one who lingers in the

enemy's country, and if he continue there for much length of time without satisfactory explanations, he is liable to be considered as remorant, or guilty of culpable delay, and an enemy. [[Footnote 11](#)]

Ships purchased from an enemy by such persons, though claimed to be neutral, are for the same reasons liable to condemnation, unless the delay of the purchaser in changing his domicile is fully and satisfactorily explained. Omission of the appellant to dispose of his interest in the steamer, and his failure to withdraw his effects from the rebellious state, are attempted to be explained and justified, because the same were, as alleged in the petition, confiscated during the rebellion under the authority of the rebel government. More than a year, however, had elapsed after the proclamation

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of blockade was issued before any such pretended confiscation took place. Members of a commercial firm domiciled in the enemy country, whether citizens or neutrals, after having been guilty of such delay in disposing of their interests or in withdrawing their effects, cannot, when the property so domiciled and so suffered to remain, is captured as prize of war, turn round and defeat the rights of the captors by proving that their own domicile was that of a friend, or that they had no connection with the illegal voyage.

Property suffered so to remain has impressed upon it the character of enemy property, and may be condemned as such or for breach of blockade. Prize courts usually apply these rules where the partnership effects of citizens or neutrals is suffered to remain in the enemy country, under the control and management of the other partners who are enemies. But there are other rules applicable to ships owned under such circumstances which must not be overlooked in this case.

5. Courts and text writers agree that ships are a peculiar property, and that such peculiarity assumes more importance as a criterion of judicial decision in war than in peace. They have a national character as recognized by the law of nations, because they regularly carry the flag of the nation to which they belong. Evidences

of ownership are also peculiar, but vary somewhat according to the laws of the country in which the ships were built or in which they are owned. [[Footnote 12](#)]

Commercial nations generally have, for the advancement of their own individual prosperity, conferred great privileges upon the ships belonging to their own citizens, and, in consideration thereof have imposed upon their owners certain special duties and obligations. Usually they are required to be registered at the home port, and they are not allowed to sail on any voyage, foreign or coasting without such papers as the laws of the country to which they belong require. [[Footnote 13](#)]

American vessels sailing for a foreign port are in all cases required by law to carry a passport, and it is generally admitted

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that such a document is indispensable in time of war. [[Footnote 14](#)] When a ship is captured as prize of war, she is bound by the flag and pass under which she sailed. Owners are also bound by those insignia of national character. They are not at liberty, when they happen to be evidence against, them to turn round and deny they character the ship has assumed for their benefit. [[Footnote 15](#)]

Established rule is that when the owners agree to take the flag and pass of another country, they are not permitted, as matter of convenience in case of capture to change the position they have voluntarily chosen, but others are allowed to allege and prove the real character of the vessel. Meaning of the rule is that the ship is bound by the character impressed upon her by the authority of the government from which all her documents issue; and Chancellor Kent says that rule is necessary to prevent the fraudulent mask of enemy's property. [[Footnote 16](#)] Adopting that rule, Dr. Lushington held, in the case of *The Industrie*, [[Footnote 17](#)] that the share of a neutral in ownership, though purchased before the war, was subject to condemnation equally with the shares of enemies in the same ship. Principle of the decision is that whoever embarks his property in shares of a ship is in general bound by the character of the ship, whatever it may

be, and that principle is as applicable to a citizen, after due notice and reasonable opportunity to dispose of his shares, as to a neutral. [[Footnote 18](#)]

6. Decision of Lord Stowell, in the case of *The Mercurius*, [[Footnote 19](#)] was that violation of blockade by the master affects the ship, but not the cargo, unless it is the property of the same owner, or unless the owner of the cargo was cognizant of the intended violation.

Proofs show that the cargo in this case was the property of the same owners, and, therefore, the case being within the principle of that decision, the cargo must follow the fate

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of the ship. Subsequent cases, however, decided by the same learned judge appear to have carried the rule much further and to have established the doctrine in that country that when the blockade was known or might have been known to the owners of the cargo at the time when the shipment was made, the master shall be treated as the agent of the cargo as well as of the ship, and that the former as well as the latter is liable to capture and condemnation. [[Footnote 20](#)]

Latest reported decision in that country is that of *Baltazzi v. Ryder*, [[Footnote 21](#)] which was heard on appeal before the Privy Council, and the determination, both in the admiralty court and in the appellate court, was that where the cargo belonged to the same owners as the ship, the owners of the cargo as well as the ship were in general concluded by the illegal act of the master.

Giving full effect to the admissions in this case, the appellant shows no just ground for the reversal of the decree made by the district court.

7. Since the appeal was entered in this Court, the other partners have filed a petition here asking leave to intervene for their interests and claiming the other five-sixths of the vessel and cargo. They were not parties in the court below, having never appeared in the suit or made any claim whatever, and of course did not and could not appeal from the decree. Substance of their excuse for not

appearing in the district court is that they were residents in a state hostile to the United States, and consequently that they had no standing in that court, by reason of such disability. Statement of the petition also is that those disabilities continued till after the case was removed into this Court by appeal; but they allege that since that time they have severally received the pardon of the President for all pains and penalties incurred for breach of blockade, and for all offenses committed by them in the rebellion, and by reason of the premises they pray that their proportion of the proceeds of

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the sale of the steamer and cargo may be restored to them. Irrespective, however, of any question which might otherwise arise as to the effect of the pardon, it is quite clear that the case is not properly before the court. Settled rule in this Court is that no one but an appellant in such a case can be heard for the reversal of a decree in the subordinate court. [[Footnote 22](#)]

8. Appellees are always heard in support of the decree, but they cannot have any greater damages than were assessed in the court of subordinate jurisdiction. Intervenors here, however, are neither appellants or appellees, as they did not appear as claimants in the district court, and were not in any way made parties to the litigation. Original jurisdiction in prize, as well as in all other admiralty causes, is vested exclusively in the district courts. Property captured, where appeals are allowed to the circuit court, follows the cause into that court, but it does not in any case follow the cause into this Court, because this Court has no original jurisdiction in such cases. [[Footnote 23](#)]

Evidently the application in this case is in its nature original, and not appellate, and it is well settled that this Court has no original jurisdiction in prize causes. [[Footnote 24](#)] Such an application cannot be first presented in this Court and allowed, because it would be assuming jurisdiction not granted either by the Constitution or the laws of Congress.

Petition of intervention is dismissed, and the

Decree of the district court affirmed.

[[Footnote 1](#)]

Jecker v. Montgomery, 13 How. 498.

[[Footnote 2](#)]

The Hoop, 1 Robinson 196; Maclachlan on Shipping 473; *The Rapid*, 8 Cranch 155; *Potts v. Bell*, 8 Term 561; Wheaton's International Law by Lawrence 547.

[[Footnote 3](#)]

Helme v. Smith, 7 Bingham 709.

[[Footnote 4](#)]

Smith's Mercantile Law, 6th ed. 197.

[[Footnote 5](#)]

Maude & Pollock on Shipping 67, 72.

[[Footnote 6](#)]

3 Kent's Com., 11th ed. 154; *Wright v. Hunter*, 1 East 20; *Lamb v. Durant*, 12 Mass. 54.

[[Footnote 7](#)]

12 Stat. at Large 1258, 257.

[[Footnote 8](#)]

Maclachlan on Shipping 475; Story on Partnership, sec. 316; *Griswold v. Waddington*, 15 Johnson 57; *Same Case*, 16 *id.* 438.

[[Footnote 9](#)]

Exposito v. Bowden, 7 Ellis & Blackburne 763.

[[Footnote 10](#)]

The Vigilantia, 1 C. Robinson 1; [The Venus](#), 8 Cranch 288; 3 Phillimore's International Law 128.

[[Footnote 11](#)]

Maclachlan on Shipping 480; *The Ocean*, 5 Robinson 91; [The Venus](#), 8 Cranch 278.

[[Footnote 12](#)]

Wheaton's International Law by Lawrence, p. 580.

[[Footnote 13](#)]

Abbott on Shipping 72.

[[Footnote 14](#)]

1 Stat. at Large 489. Maude & Pollock on Shipping 95.

[[Footnote 15](#)]

Story on Prize 61; *The Elizabeth*, 5 C. Robinson 3; *The Fortuna*, 1 Dodson 87; *The Success*, *id.*, 132.

[[Footnote 16](#)]

1 Kent's Com., 11th ed. 91.

[[Footnote 17](#)]

33 Eng.Law & Eq. 572.

[[Footnote 18](#)]

The Primus, 29 Eng.Law & Eq. 589.

[[Footnote 19](#)]

1 C. Robinson 80.

[[Footnote 20](#)]

The Alexander, 4 C. Robinson 94; *The Adonis*, 5 *id.* 259; *The Exchange*, 1 Edwards' Adm. 39; *The James Cook*, *ibid.*, 261.

[[Footnote 21](#)]

12 Moore's Privy Council 183.

[[Footnote 22](#)]

[Harrison v. Nixon](#), 9 Pet. 484; [Canter v. Am. Ins. Co.](#), 3 Pet. 318; [Stratton v. Jarvis](#), 8 Pet. 4; *Airey v. Merrill*, 2 Curtis' C.C. 8; *Allen v. Hitch*, 2 *id.* 147; [Buckingham v. McLean](#), 13 How. 150.

[[Footnote 23](#)]

[Jennings v. Carson](#), 4 Cranch 28; [The Collector](#), 6 Wheat. 194.

[[Footnote 24](#)]

[The Harrison](#), 1 Wheat. 298; [Marbury v. Madison](#), 1 Cranch 173.