

## STATUTE I.

July 6, 1812.

CHAP. CXXIX.—*An Act to prohibit American vessels from proceeding to or trading with the enemies of the United States, and for other purposes.*(a)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no ship or vessel, owned*

(a) The decisions of the Courts of the United States, on "Trading with the Enemy," have been:—

Action of assumpsit to recover the balance of an account current for merchandise purchased in England by order of the defendants. The defence was, that the contract was made during the war, and therefore void. By the Court—The doctrine is not to be questioned at this day, that, during a state of hostility, the citizens of the hostile states are incapable of contracting with each other. *Scholefield v. Eichelberger*, 7 Peters, 586.

To say that this rule is without exception, would be assuming too great latitude. The question has never yet been examined whether a contract for necessities, or even for money to enable the individual to get home, could not be enforced; and analogies familiar to the law, as well as the influence of the general rule, in international law, that the severities of war are to be diminished by all safe and practical means, might be appealed to in support of such an exception. But at present, it may be safely affirmed that there is no recognized exception, but permission of a state to its own citizens; which is also implied in any treaty stipulation to that effect, entered into with a belligerent. *Ibid.*

Property engaged in illicit trade with the enemy, must be condemned to the captors, not to the United States. *The Sally*, Porter, Master, 8 Cranch, 382; 3 Cond. Rep. 177.

A vessel owned by citizens of the United States, sailed from Naples in the year 1812, for the United States, with a cargo, and a British license to carry the same to England. On her passage, hearing of the war, she altered her course for England, was captured by the British, carried into Ireland, labelled and acquitted, sold her cargo, and after a detention of seven months in Ireland, purchased a return cargo in England, sailed for the United States, and was captured by an American privateer. The vessel and cargo were condemned as prize to the captors. *The Alexander*, 8 Cranch, 169; 3 Cond. Rep. 72.

If a citizen of the United States establishes his domicile in a foreign country, between which and the United States hostilities afterwards break out, any property shipped by him before knowledge of the war, and captured by an American cruiser after the declaration of war, will be condemned as prize. *The Venus*, 8 Cranch, 253; 3 Cond. Rep. 109.

Illegal traffic stamps a hostile character on the property, and attaches to it all the penal consequences of enemy ownership. *The Sally*, 8 Cranch, 382; 3 Cond. Rep. 177.

The property of a citizen does not become divested, ipso facto, by the mere act of illicit intercourse with the enemy; the property is only liable to be condemned as enemy's property, or as adhering to the enemy, if rightfully captured during the voyage. *The Thomas Gibbons*, 8 Cranch, 421; 3 Cond. Rep. 193.

A vessel sailing to an enemy port, after knowledge of the war, and captured, bringing thence a cargo consisting chiefly of enemy goods, is liable to confiscation as prize of war. *The St. Lawrence*, 8 Cranch, 434; 3 Cond. Rep. 202.

Trading with the enemy is not excused by the necessity of obtaining funds to pay the expenses of the ship; nor by the opinion of an American minister expressed to the master, that by undertaking the voyage he would violate no law of the United States. *The Joseph*, 8 Cranch, 451; 3 Cond. Rep. 212.

If, upon the breaking out of a war, a citizen has a right to withdraw his property from the enemy's country, it is necessary it should be exercised with due diligence, and within a reasonable time after the knowledge of hostilities. *The St. Lawrence*, 9 Cranch, 120; 3 Cond. Rep. 301.

If a cargo be innocently put on board in an enemy's country, if at that time the importation be lawful, it cannot be rendered unlawful by a detention, occasioned in the course of the voyage, either by the perils of the sea or the act of the enemy; unless this effect be produced by some positive act of the legislature. *The Mary*, 9 Cranch, 126; 3 Cond. Rep. 306.

An American citizen is equally guilty of trading with the enemy, whether that trade is carried on between a hostile port and the United States, or between such port and any foreign nation. *The Rugen*, 1 Wheat. 62; 3 Cond. Rep. 485.

The offence of trading with the enemy is complete, the moment a vessel sails with intention to carry her cargo to a hostile port. *Ibid.*

A subject of a state at war cannot, under cover of neutral muniments, however regularly procured, or formal, violate with impunity his duty and allegiance to his own country. *Ibid.*

All trade with the enemy, unless with the permission of the sovereign, is interdicted; and subjects the property engaged in it to the penalty of confiscation. *The Rapid*, 1 Gallis. C. C. R. 295.

All communication and intercourse with the enemy is prohibited, and it is in nowise important, whether the property engaged in the inimical communication be bought and sold, or merely transported and shipped. *Ibid.*

A citizen of the United States cannot lawfully withdraw his property, acquired before the war, from the enemy's country, after he has knowledge of the war, without permission of government. *The St. Lawrence*, 1 Gallis. C. C. R. 467.

If a vessel be sent from the United States, after knowledge of the war, to the enemy's country to withdraw such property, the vessel and cargo are subject to capture and condemnation, jure belli. 1 Gallis. C. C. R. 295.

The property of citizens taken trading with the enemy, is considered as quasi enemy's property. *Ibid.*

A trade to a neutral port, during war, is not rendered illegal from the mere circumstance that the interests of the enemy are thereby aided, or his policy enforced: it must, before it can be liable to condemnation on that ground, be carried on, on account of the enemy, under contract with him, destined for his use, or voluntarily incorporated into his service by licenses. *The Liverpool Packet*, 1 Gallis. C. C. R. 513.

The circumstance that a neutral is engaged in enemy navigation does not subject all his trade from the neutral country, on neutral voyages, to the enemy character. *Ibid.*

in whole or in part by a citizen or citizens of the United States, shall be permitted to clear out or depart from any port or place within the limits of the United States or territories thereof, to any foreign port or place, till the owner or owners, agent, factor, freighter, master or commander, shall have given bond, with sufficient security, in the amount of such ship or vessel and cargo, not to proceed to or trade with the enemies of the United States. And if any ship or vessel owned as aforesaid, shall depart from any port or place within the limits of the United States or territories thereof, for any foreign port or place without giving bond with security aforesaid, such ship or vessel, and cargo, shall be forfeited to the use of the United States; and the owner or owners, freighter, factor or agent, master or commander, shall severally forfeit and pay a sum equal to the value of such ship or vessel and cargo; and the said master or commander, if privy thereto, and being thereof convicted, shall be liable to a fine not exceeding one thousand dollars, and imprisoned for a term not exceeding twelve months, in the discretion of the court.

Owners of vessels to give bonds, upon clearing out, not to trade with the enemy.

Penalty for so doing.

SEC. 2. *And be it further enacted,* That if any citizen or citizens of the United States, or person inhabiting the same, shall transport or attempt to transport, over land or otherwise, in any wagon, cart, sleigh, boat, or otherwise, naval or military stores, arms or the munitions of war, or any article of provision, from any place of the United States, to any place in Upper or Lower Canada, Nova Scotia or New Brunswick, the wagon, cart, sleigh, boat, or the thing by which the said naval or military stores, arms, or munitions of war or articles of provision are transported or attempted to be transported, together with such naval or

Trade with the enemy by land interdicted.

Every voyage from an enemy port, especially with a cargo on board, and without the license of the government, carries with it a presumption of illegal traffic and hostile interests, from which nothing but the most explicit proofs by the claimants can relieve the cause. The presumption of illegal traffic arises, notwithstanding any papers or any explanation of the persons found on board: the captors have a right to bring the property in, and subject the whole to the adjudication of a competent tribunal. In such case, damages and costs are never to be adjudged as against the captors. *Ibid.*

If, after a knowledge of the war, an American vessel go to an enemy port, and take in a cargo there, the vessel and cargo are liable to confiscation for trading with the enemy. *The Alexander*, 1 Gallis. C. C. R. 532.

If an American vessel, after knowledge of the war, proceed from a neutral to a hostile port on freight, it is a trading with the enemy, which subjects the vessel to forfeiture; and she is liable therefore on her return voyage to the United States. *The Joseph*, 1 Gallis. C. C. R. 545.

In cases of trading with the enemy, the property is deemed quasi enemy's property, and it is condemned to the captors and not to the United States. *Ibid.*

No principle of national or municipal law is better settled than that all contracts with an enemy, made during war, are utterly void. *The Emulous*, 1 Gallis. C. C. R. 563.

A shipment made from the enemy's country, after a knowledge of the war, by an American citizen, subjects the property to condemnation as prize of war. *The Mary*, 1 Gallis. C. C. R. 620.

A shipment made, after a known war, by an American citizen, subjects the property to condemnation as prize of war. *The Diana*, 2 Gallis. C. C. R. 93.

If an American vessel take on board a cargo from an enemy's ship, under the pretence that it is ransomed, it is an illegal traffic, for which, by the law of war, she is liable to condemnation as prize of war; and may be seized on the return voyage. *The Lord Wellington*, 2 Gallis. C. C. R. 103.

A citizen of the United States may lawfully draw a bill on a subject of a foreign power, with whom we are at war; such an act not leading to any injurious intercourse, nor amounting to a trading with the enemy. *United States v. Barker*, Paine's C. C. R. 156.

An American vessel, after the commencement of hostilities with Great Britain, sailed, having on board a messenger from the British minister in the United States, with despatches for his government, and a letter of protection from British capture; this is a sufficient cause of condemnation. *The Tulip*, 3 Wash. C. C. R. 181.

All contracts with an enemy are not necessarily void. Cases of extreme necessity, form exceptions to the rule. Contracts made under license of the government, whether they arise directly or collaterally, out of the licensed trade; or if the enemy, with whom the contract is made, be in the hostile country, by license of that government, (cases of ransom bonds,) so contracts made by prisoners of war, for their subsistence, are also exceptions. *The William Penn*, 3 Wash. C. C. R. 484.

A voyage from an enemy port with a cargo on board, without the license of the government, is of itself a probable cause for capture. *The Liverpool Packet*, 1 Gallis. C. C. R. 513.

A trade to a neutral port is not illegal, although the public enemy derive benefit thereby, unless such trade be considered in connexion with, or subservient to, hostile interests and policy. *Ibid.*

The United States may proceed against property found engaged in trade with the enemy, as prize of war. *The Eliza*, 2 Gallis. C. C. R. 4.

At common law, any individual might seize for the king; and upon this ground it has been held, that public or private armed ships may seize for violation of a statute. But, in such case, it is at the peril of the party making the seizure. *The Rover*, 2 Gallis. C. C. R. 240.

**Forfeitures and penalties.**

military stores, arms, or munitions of war or provisions, shall be forfeited to the use of the United States, and the person or persons aiding or privy to the same shall severally forfeit and pay to the use of the United States a sum equal in value to the wagon, cart, sleigh, boat, or thing by which the said naval or military stores, arms, or munitions of war or articles of provision, are transported, or are attempted to be transported; and shall moreover be considered as guilty of a misdemeanor, and be liable to be fined in a sum not exceeding five hundred dollars, and imprisoned for a term not exceeding six months, in the discretion of the court: *Provided*, that nothing herein contained shall extend to any transportation for the use or on account of the United States or the supply of its troops or armed force. (a)

**Proviso.**

Collectors authorized to seize naval and military stores, &c.

SEC. 3. *And be it further enacted*, That the collectors of the several ports of the United States be, and the same are hereby authorized to seize and stop naval or military stores, arms, or the munitions of war, or any articles of provision, and ship or vessel, wagon, cart, sleigh, boat, or thing by which any article prohibited as aforesaid is shipped or transported, or attempted to be shipped or transported, contrary to the provisions of this act.

None but vessels belonging to citizens of the United States or inhabitants of countries in amity with them, to be admitted to entry.

SEC. 4. *And be it further enacted*, That no ship or vessel belonging to any citizen or citizens, subject or subjects of any state or kingdom in amity with the United States, except such as at the passage of this act shall belong to the citizen or citizens, subject or subjects of such state or kingdom, or which shall hereafter be built in the limits of a state or kingdom in amity with the United States, or purchased by a citizen or citizens, subject or subjects of a state or kingdom in amity with the United States aforesaid, from a citizen or citizens of the United States, shall be admitted into any port or place of the United States, unless forced by stress of weather, or for necessary repairs; and any ship or vessel, belonging to a citizen or citizens, subject or subjects of any state or kingdom in amity with the United States, as aforesaid, except such ships and vessels as are above excepted, which shall, from and after the first day of November next, enter, or attempt to enter any port or place aforesaid, the same, with her cargo, shall be forfeited to the use of the United States.

**Exceptions.**

British packets, &c. &c. may enter till September.

SEC. 5. *And be it further enacted*, That any British packet or vessel with despatches destined for the United States, and which shall have departed from any port or place in the United Kingdom of Great Britain and Ireland or its dependencies, on or before the first day of September next, shall not be liable to be captured or condemned, but the same shall be permitted to enter and depart from any port or place in the United States: *Provided*, that nothing herein contained shall be construed to affect any cartel, or vessel with flag of truce.

Cartels and flags of truce.

Passports may be given for six months for British property.

SEC. 6. *And be it further enacted*, That the President of the United States be, and he is hereby authorized to give, at any time within six months after the passage of this act, passports for the safe transportation of any ship or other property belonging to British subjects, and which is now within the limits of the United States.

Penalties for taking licenses to trade with British ports.

SEC. 7. *And be it further enacted*, That every person being a citizen of the United States, or residing therein, who shall receive, accept, or obtain a license from the government of Great Britain, or any officer thereof, for leave to carry any merchandise, or send any vessel into any port or place within the dominions of Great Britain, or to trade with

(a) Fat cattle are provisions, or munitions of war within the meaning of the act of Congress of July 6, 1812, to prohibit American vessels from proceeding to, or trading with, the enemies of the United States, and for other purposes. *United States v. Job L. Barber*, 9 Cranch, 243; 3 Cond. Rep. 405. *United States v. Sheldon*, 2 Wheat. 119; 4 Cond. Rep. 62.

The sending of armed vessels, or munitions of war from a neutral country to a belligerent port, for sale as articles of commerce, is unlawful only as it subjects the property to capture by other belligerents. *The Santissima Trinidad*, 7 Wheat. 283; 5 Cond. Rep. 284.

any such port or place, shall, on conviction for every such offence, forfeit a sum equal to twice the value of any such ship, merchandise or articles of trade, and shall moreover be deemed guilty of a misdemeanor, and be liable to be imprisoned not exceeding twelve months, and to be fined not exceeding one thousand dollars.

APPROVED, July 6, 1812.

STATUTE I.

CHAP. CXXX.—*An Act supplementary to the act entitled "An act respecting alien enemies."*

July 6, 1812.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That nothing in the proviso contained in the act, entitled "An act respecting alien enemies," approved on the sixth day of July, one thousand seven hundred and ninety-eight, shall be extended or construed to extend to any treaty, or to any article of any treaty, which shall have expired, or which shall not be in force, at the time when the proclamation of the President shall issue.

Proviso in the act of July 6, 1798, ch. 66, sec. 1, not to extend to any treaty which has expired, or is not in force.

APPROVED, July 6, 1812.

STATUTE I.

CHAP. CXXXI.—*An Act making additional appropriations for the Military Establishment and for the Indian Department for the year one thousand eight hundred and twelve.*

July 6, 1812.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That for defraying the expenses incurred and to be incurred under the several acts, entitled "An act to establish a quartermaster's department and for other purposes," and an act to amend the same, "An act making further provision for the corps of engineers," and "An act making further provision for the army of the United States," for the Indian department and for satisfying certain outstanding claims, there be, and hereby is appropriated, to be paid out of any monies in the treasury not otherwise appropriated, in addition to the sums already appropriated for the said objects respectively, the following sums, that is to say:

Specific appropriations.

Act of March 28, 1812, ch. 46.

Act of May 22, 1812, ch. 92.

Act of April 29, 1812, ch. 72.

May 16, 1812, ch. 86.

For the pay of the army, seventy-two thousand five hundred and ninety-six dollars.

For forage, four thousand seven hundred and twenty-two dollars.

For subsistence, six thousand two hundred and fifty dollars.

For clothing, three thousand seven hundred and forty-five dollars.

For clerk hire and stationery, in the offices of the quartermaster general and commissary general of purchases, three thousand one hundred and fifty dollars.

For the salary of the commissary general of purchases and compensations of the deputy commissaries, six thousand five hundred dollars.

For contingent expenses of the Indian department, comprising the employment of temporary agents, presents to the Indians, and transportation, twenty thousand dollars.

For the payment of such balances as have been or may be ascertained from actual settlements made by the accountant of the department of war, and which cannot be discharged out of any existing appropriations, five thousand dollars.

APPROVED, July 6, 1812.

STATUTE I.

CHAP. CXXXII.—*An Act fixing the time for the next meeting of Congress.*

July 6, 1812.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That after the adjournment of

Congress to meet first Mon-