

This decision of Lord Stowell's gave legal ground for Lord Bathurst's declaration that "Great Britain knows of no exception to the rule that all treaties are put an end to by a subsequent war between the same powers;" for Lord Stowell, in the case referred to, defined fishing as a "trade," and therefore any exercise during the war, of the special privileges conceded to American fishermen to make "agreements" with British proprietors for places to dry and cure fish, for the repair of damages, and for the purchase of wood, and to obtain water, within the bays and harbours of the British Colonies, would necessarily bring the American fishermen within the prohibition of "trading with the enemy," and make them, and their vessels, liable to the penalties prescribed by the municipal laws of the United States and Great Britain.

And the Supreme Court of the United States also declared that "No principle of international, or municipal, law is better settled than that all contracts and commercial intercourse, between the citizens of hostile states, during a state of hostility, are utterly void; and that this doctrine could not at that date (1833) be questioned, for it had been the acknowledged and settled doctrine of the Supreme Court for nearly twenty years; that shipments made by citizens of the United States from an enemy's country during the war, were subject to condemnation as quasi enemy's property; and that if, after a knowledge of the war, an American vessel should go to an enemy's port and take in a cargo there, the vessel and cargo were liable to confiscation as prize of war, for trading with the enemy."<sup>12</sup> To which may be added the doctrine of the United States that: "Property on an enemy's territorial waters rests, on principle, on the same basis as property on his land."<sup>13</sup>

Lord Castlereagh succeeded Lord Bathurst as Foreign Secretary in 1816, and under his instructions, Mr. Bagot, then

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<sup>12</sup>*Scholfield v. Eichelberger*, 7 Peters (U.S.) 586; and 3 Condensed Reports of the U.S. Supreme Court, 147.

<sup>13</sup>Wharton's Digest of the International Law of the United States, vol. 3, s. 341.