

This was a question of an English schooner seized for a violation of the United States' Coasting Act of 1793, c. 8, and the Revenue Act of 1799, c. 128; and it appeared in evidence, that the acts of illicit trade were committed on the American side of the stream, and about one third way over from the American side between Moose Island and Campo Bello Island. If the middle of the stream constituted by the Law of Nations the true boundary line, then it was admitted by the parties that the illicit acts were done within the American waters.

Mr. Justice Story held that by the Law of Nations, when no exclusive and prior occupancy has existed, "each of the nations inhabiting the opposite banks of a river or bay, has a right to go to the middle of the stream, calculated from low water mark as the limit of its territorial boundary. This doctrine has been affirmed by the Supreme Court in the case of *Handly's Lessee v. Anthony* (5 *Wheaton*, 374). But although the territorial line of a nation, *for purposes of absolute jurisdiction*, may not extend beyond the middle of the stream, yet, consistently with this doctrine, the right to the *use* of the whole river or bay *for the purpose of navigation, trade, and passage*, may be common to both nations. Such a right does not destroy the territorial jurisdiction to the middle of the stream; but it is in the nature of an *easement*, as it is called at the common law, or a *servitude*, as it is called in the civil law. It is like the right of a highway, or private way, over the land of another. This right of passage and navigation must exist, as a common right, in all those cases where such passage or navigation is ordinarily used by both nations, and is indispensable for their common convenience and access to their own shores. A river or bay may be so narrow or irregular, or so liable to difficulties from winds, waves, and currents, that it cannot be navigated by either nation without the necessity of the right of passing over the whole waters at all times. If in such a case no exclusive right is recognized in either nation, the constant use by both is conclusive proof of a common right of passage and navigation in both.

"There is no pretence to say that Great Britain had, as to us, acquired previously to the Revolution