

th we shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States." "

The alleged cause was a decree, or legislative act, of the French Directory of 1796 which declared that "every vessel found at sea, loaded in whole or in part with merchandise the production of England, or of her dependencies, shall be declared good prize, whoever the owner of the goods or merchandise may be," thereby abrogating the Treaty of 1778, which provided that "free ships shall give freedom to goods on board of the ships of the subjects of either nation, contraband goods excepted." "

A case with Russia affecting this subordinate class of trade and commerce, under a Treaty of 1832, under which it was claimed that no higher duty than 25 dollars per ton should be chargeable on Russian hemp, raised a similar question. By a subsequent Act of Congress the duty was raised to 40 dollars per ton. An action was brought in a United States court for a refund of the extra duty; but the court said: "To refuse to execute a Treaty for reasons which approve themselves to the conscientious judgment of a nation is a matter of the utmost gravity and delicacy, but the power to do so is prerogative, of which no nation can be deprived without deeply affecting its independence." " In a later case, involving the same question, the court said: "Congress may render a Treaty inoperative by legislation in contradiction of its terms without formal allusion at all to the Treaty; thus modifying the law of the land without denying the existence of the Treaty or the obligations thereof between the two Governments as a contract." "

This latter mode has been applied to Canada on more than one occasion by the United States. Shortly after Jay's Treaty of 1794, the Executive of the United States nullified the 3rd Article of that Treaty, which provided that "it shall at all times be free to the subjects and citizens of both nations freely to pass

¹⁰ Statutes at Large (U.S.), vol. 1., p. 578, c. 67.

¹¹ American State Papers, Foreign Relations, vol. 2, pp. 169-182.

¹² *Taylor v. Morton* (1855), 2 Curtis (U.S.), 454.

¹³ *Ropes v. Clinch* (1871), 8 Blachford (U.S.), 304.