

evidence in this case. And this point is one upon which the applicants have dwelt, as being most important to the due decision of this case.

It has been contended by the counsel, that this is not an act of war *per se*, but if an act of war at all, is only so constructively. I do not understand this distinction. No author with whom I am acquainted has ever made it: and it has never, to my knowledge, been urged in a court of justice.

Acts of war by the law of nations, are just such acts as the belligerents choose to commit within the territories of each other.—These acts are done upon the responsibility of the nation, and the soldiers committing them can in no way be held punishable for them. They may be what is termed unlawful acts of war, and violations of the law of nations, but I, as a judge in a neutral country, cannot sit in judgment upon them. Being committed within the territory of the belligerent, there is no violation of our law: nor can the belligerent invoke their unlawfulness before me. By the international code, reciprocity is acknowledged by all authors to be one of the obligations of belligerents, and one of the tests of the lawfulness of their acts as against each other.

Whatever then, is done by one nation to the other, within belligerent territory in carrying on the war, must necessarily be permitted to the other. As a matter of fact, raids of this description have been constantly permitted and justified by and on behalf of the United States? On what principle then can they be denied to the so-called Confederate States. However, as far as regards the violence or unlawfulness of these acts, as a neutral I have no authority to decide. It is for the belligerents themselves to deal with these questions; and where authority, either express or implied, is given by one belligerent to do the act, it is an act of war for which alone the belligerent is responsible. These doctrines do not apply, and never could be intended to apply, to crimes possessing no characteristic of hostility, committed by order of a sovereign in time of peace and without just cause. There is no analogy between the cases cited by the counsel, such as the treacherous assassination of an individual by a hired murderer, and cases of the description now before me. They rest upon entirely different grounds. The general and abstract rule undoubtedly is, that every subject of one belligerent is the enemy of every subject of the other, and that one belligerent may lawfully kill his enemy or seize upon his property wherever he finds him or it, except in neutral territory. Happily for the world, of which so large a portion is constantly engaged in war, civilized nations in modern times have voluntarily imposed upon themselves rules for their guidance in war, the breach of which exposes the nation which infringes them, to the censure and