

He then quoted the opinion of Dana in his edition of Wheaton¹ which he said "not only dealt admirably with the distinction between seizure on land and at sea but it also gives prominence to the reasons why 'maritime merchandise' and 'cargoes' should be differently regarded." The quotation from Dana concluded as follows:

"The matter may, then, be summed up thus: merchandise, whether embarked upon the sea or found on land, in which the hostile power has some interest for purposes of war, is *prima facie* a subject of capture. Vessels and their cargoes are usually of that character. Of the infinite varieties of property on shore, some are of this character, and some are not. There are very serious objections, of a moral and economical nature, to subjecting all property on land to military seizure. These objections have been thought sufficient to reverse the *prima facie* right of capture. To merchandise at sea, these objections apply with so little force that the *prima facie* right of capture remains."

Sir Samuel added:

"We start, accordingly, in considering the present case, with the broad assumption that all enemy property—ships and cargoes—may, after the outbreak of war, be captured *jure belli* on the sea, or in rivers, ports, and harbours of this country. (There are other captures which can be made which do not concern this case.)"

Upon appeal,² the Privy Council affirmed the opinion of Sir Samuel. Referring with approval to the above quoted opinion of Dana, Lord Parker added:

"It will be found that Halleck (*International Law*, Vol. III., p. 126) states that whatever bears the character of enemy property (with a few exceptions, not material for the purpose of this case), if found upon the ocean or afloat in port, is liable to capture as a lawful prize by the opposite belligerent. It is the enemy character of the goods and not the nationality of the ship on which they are embarked or the date of embarkation which is the criterion of lawful prize. This is in full accordance with Lord Stowell's statement in the *Rebeckah* of the manner in which the Order of 1665 defining admiralty droits has been construed by usage."

Sec. 237. The Same (Continued). The Chinese Prize Court in the case of the *Silesia*³ affirmed that it was "an inherent right" of a belligerent to capture enemy ships and cargoes and the German Supreme Prize Court in the case of the *Glitra* asserted that "the seizure and capture of an enemy ship was as against

¹ 8th ed., 1866, note 171, p. 451.

² II Lloyd 385; I Br. & Col. Pr. Cas. 536.

³ Cheng, Judgments of the High Prize Court of the Republic of China, 88.