

United States v. Barber.

2. That judgment must be given for the defendants as to the several sums of \$20,613.12, of \$14,374.77, of \$9895.09, of \$10,718.03, of \$16,133.44, of \$6238.35, and of \$4479.68, being the several sums assessed, as conditional damages on the second breach.

3. That judgment must be given for the defendants, for the sum of \$5255.73, being the damages assessed upon the fourth breach, and

4. That judgment must be given for the defendants for the sum of \$309.87, being the damages assessed upon the fifth breach.

UNITED STATES v. JOB L. BARBER. (a)

Hostile trade.

Fat cattle are provisions, or munitions of war, within the meaning of the act of congress, of the 6th of July 1812, to prohibit American vessels from proceeding to or trading with the enemies of the United States, and for other purposes.

THIS was a case certified from the Circuit Court for the district of Vermont, the opinions of the judges of which court were opposed.

Barber was indicted, "for that he being a citizen of the United States, and inhabiting the same, with force and arms, at," &c., "did attempt to transport overland thirty head of fat cattle, which were then and there articles of provision and munitions of war, and were all of the value of \$300, from a place in the United States, to wit, from Berkshire, in the said district of Vermont, to a place in the province of Lower Canada, to wit, to St. Armons, in the province aforesaid, contrary to the form, force and effect of the statute of the United States, in such case made and provided," &c. There was another count in which he was charged with the actual transportation of them. After a verdict against him, he obtained a rule to show cause why judgment *should not be arrested, because fat cattle were neither provisions nor munitions of war, within the meaning of the act of congress, entitled "an act to prohibit American vessels from proceeding to or trading with the enemies of the United States, and for other purposes," or any other act of congress.

By the second section of the act referred to, which was approved on the 6th of July 1812 (2 U. S. Stat. 779), it is enacted, "that if any citizen of the United States, or person inhabiting the same, shall transport, or attempt to transport, overland, or otherwise," "naval or military stores, arms or the munitions of war, or any article of provision, from any place of the United States, to any place in Upper or Lower Canada, Nova Scotia or New Brunswick," "the person or persons aiding or privy to the same shall" "be considered as guilty of a misdemeanor, and be liable to be fined in a sum not exceeding five hundred dollars, and imprisoned for a term not exceeding six months, in the discretion of the court."

March 7th, 1815. (Absent, Todd, J.) THIS COURT ordered it to be certified to the circuit court, that it is the opinion of this court, that fat cattle are provisions, or munitions of war, within the true intent and meaning of the act, entitled "an act to prohibit American vessels from proceeding to, or trading with, the enemies of the United States, and for other purposes."

(a) March 7th, 1815. Absent, Todd, Justice.