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English Neutrality: Is the Alabama a British Pirate?

Grosvenor Porter Lowrey

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ENGLISH NEUTRALITY.

IS THE ALABAMA A BRITISH PIRATE?

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TO ABIEL A. LOW, ESQ.

WHEN Great Britain was last in the position of requiring from other nations the observance of a strict neutrality, the unjust aspersion was cast upon your house of fitting out a vessel in the interest of her enemy. The searching investigation—demanded by you—which followed, led to your complete vindication, and an indignant declaration by the merchants of New York of their abhorrence of the crime against honest neutrality, which had been so falsely laid upon American merchants.

Now, when England is called upon to *perform* the duties of neutrality, you become, by the loss of your ship, the *Jacob Bell*, a principal sufferer from her flagrant disregard of international justice and honor.

These special circumstances alone, show an evident propriety in inscribing to you this reading of law and history upon the cases of those public marauders, the *Alabama* and *Florida*. But other considerations unite to prove the fitness of such a dedication : and among them may be enumerated that eminent enterprise which has made your name the synonym of honor in the four quarters of the globe ; your unflinching and self-sacrificing patriotism in these days of trial ; your public and intelligent advocacy of right principles and right practice toward other nations under the irritating and embarrassing circumstances of the time ; and, above all, that universal judgment of the community in which you live, by which is conceded to you a union of public and private virtues fully entitling you to the high place you hold in men's esteem.

The public voice will cordially endorse the truth of these observations, and admit their force as a justification for joining your name to this effort to direct popular attention to those serious complications, now arising from the course of conduct towards this nation which Great Britain has chosen to adopt.

With great respect, I am

Your obedient servant,

GROSVENOR P. LOWREY.

NEW YORK, *March* 14, 1863.

ENGLISH NEUTRALITY.

DURING the past twelve months, numerous and notorious acts, in breach of those obligations of neutrality which are due from a friendly nation to another engaged in war, have been perpetrated against us by the British government and people. The action of our government touching these grave matters, has been forbearing, although firm, and in all respects admirable, in contrast with the action and language of England herself in former times, under circumstances differing from the present only in the respect that, from the character of this war, our claim to the observance of strict neutrality is stronger than hers has, or could ever have been. The public journals of England announce that, far from any cessation of this evil industry, the arming and equipping of vessels to cruise against our commerce is going on with increased energy, and with such lack of disguise, that we are forced to consider the councils of that country as wanting in capacity or good faith. But little knowledge of international history is requisite to decide upon which horn of the dilemma to locate the probability.

Under such a state of facts, it is time that the people at large were led to consider, in the light of history and law, the exact character and limitation of their rights in such cases.

That code which, under the general name of the Law of Nations, is admitted to control the conduct of states toward each other, ought to be, and, as defined by the publicists, is founded upon the most elevated considerations of morals, justice, equity, and convenience. In this dignified system, under which nations act in view of all the world, it is the substance, rather than the form of things, which is regarded; and those small technicalities which, in municipal systems, often impede the course of justice, are rightly disregarded.

The relation of neutrality which arises under the law of nations is declared by Phillimore, the latest and best English writer

upon international law, to consist in two principal circumstances:

1. Entire abstinence from any participation in the war.
2. Impartiality of conduct towards both belligerents.

These obligations are frequently strengthened, and made obligatory upon all persons resident within the territorial jurisdiction of a nation, by, *first*, treaties; and, *second*, enactments of the local legislature, or whatever, in each case, corresponds to such a body. As between this nation and Great Britain, the right and duty of neutrality rest upon international law and the statutes of the respective countries. We have, on our part, endeavored to provide for the prevention or punishment of unneutral acts, by either citizens or strangers, while among us, through acts of Congress of 1794, 1818, and 1838. Great Britain has undertaken to accomplish the same end by act of Parliament, 59 Geo. III., c. 69.* A review of the action and

* The following are extracts from the act of 59 Geo. III., commonly called the Foreign Enlistment Act:

"SEC. 7. And be it further enacted, that if any person within any part of the United Kingdom, or in any part of his majesty's dominions beyond the seas, shall, without the leave and license of his majesty, for that purpose first had and obtained, as aforesaid, equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent, or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province, or people, or of any person or persons, exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province, or people, as a transport, or storeship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province, or country, or against the inhabitants of any foreign colony, province, or part of any province or country with whom his majesty shall not then be at war; or shall within the United Kingdom or any of his majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid; every such person so offending shall be deemed guilty of misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of his majesty's customs or excise, or any officer of his majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade or navigation, to seize such ships and vessels as aforesaid, and in such places and in such manner in which the officers of his majesty's customs or excise and the officers of his majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues, customs, and excise, or of the laws of trade and navigation.

"SEC. 8. And be it further enacted, that if any person in any part of the United

demands of each government, in cases of infraction of neutral rights in times past, will be important, for the purpose of ascertaining what, precisely, is the law of nations upon this point ; but that must be postponed for a statement of some of the facts of which we now complain.

Upon the breaking out of the rebellion, the British government made haste to concede belligerent rights to the insurgents, and to declare its intention to observe strict neutrality. The state of English law was such that this proclamation was entirely uncalled for, as it could neither increase nor decrease legal obligations or penalties ; and its only effect was to guarantee to adventurers, who might wish to enlist with the rebellion, that they should thereby undergo no greater risks than the ordinary chances of regular war. The promulgation of the first proposition was generally taken to be, and perhaps was, intended to relieve such persons from the character and ugly responsibility of pirates and freebooters. It became, in fact, an invitation, as it did not, on the other hand, enjoin vigilance upon officials or threaten punishment to offenders. Under this encouragement, the business of ship-building for the South commenced, and went on with a rapidity which was surprising to those who had forgotten that Manchester and Sheffield furnished supplies to maintain the Sepoy rebellion. The two principal cases are those of the war-steamers *Oreto* and *Alabama*. In February, 1862, it was notorious at Liverpool that the *Oreto* (now called the *Florida*), a newly-launched war-steamer, was intended for the Confederate service ; and the American Minister, Mr. Adams, wrote to Lord Russell (*Diplomatic Correspondence for 1862*), notifying him of the

Kingdom of Great Britain and Ireland, or in any part of his majesty's dominions beyond the seas, without the leave and license of his majesty for that purpose first had and obtained, as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which, at the time of her arrival in any part of the United Kingdom, or any of his majesty's dominions was a ship-of-war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in, or over any colony, province, or part of any province, or people, belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province, or country, under the control of any person or persons so exercising or assuming to exercise the powers of government ; every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine or imprisonment, or either of them, at the discretion of the court before which such offender shall be convicted."

character of the vessel ; upon which the customs officer of that port was directed to investigate the matter. This zealous official proceeded to make inquiries of the builders, who informed him that the vessel was owned by Fawcett, Preston & Co., of Liverpool, and that they (the builders) believed she was destined for Palermo—stating, as the ground of this belief, that “they had been requested to name a master to take her to that port.” No inquiry appears to have been made of the owners or other persons, and the collector reported that the *Oreto* was, without doubt, bound on a legitimate voyage. Upon further representations by Mr. Adams, an examination was made of her, when her crew was found to consist of fifty-two *Englishmen* and one American, and her cargo of one hundred and seventy-three tons of arms, for Palermo and *Jamaica*. These suspicious circumstances, together with the universal public rumor as to her real destination, were disregarded, and she was permitted to sail. Her first port was Nassau, in New Providence, a British colonial port. At this place her real character was well known and no longer denied. Upon demand of the American consul, some sham proceedings were taken against her by the English local authorities, but she was detained only long enough for her new commander to reach her, and then allowed to continue her piratical voyage. Her career since that time is fresh in the memory of every man, and need not be recapitulated. Her latest exploit is the burning of the ship *Jacob Bell*. Mr. Adams writes (March 7, Dip. Cor. 1862:)

“The nominal destination of the *Oreto* for Sicily is the only advantage which appears to have been derived from my attempt to procure the interference of the government to stop her departure.”

The only apology for such dereliction was, “a polite expression” by Lord Russell “of regret;” but “he did not see how her majesty’s government could change its position.” (Mr. Adams to Mr. Seward, April 16, 1862.)

In the next case, that of the *Alabama*, this excuse (bad in itself), that the American minister did not furnish sufficient proof to justify interference by the government, is wholly wanting. On the 23d of June, 1862, Mr. Adams wrote to Lord Russell, informing him that the *Oreto* had gone to Nassau, and that another and more formidable war-steamer was nearly ready to follow her. Said he :

"This vessel has been built and launched from the dockyard of persons, one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest purpose of carrying on hostilities at sea. It is about to be commanded by one of the insurgent agents, *the same who sailed in the Oreto*. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States, the nature and extent of whose labors are well explained in the copy of an intercepted letter, which I received from my government, and had the honor to place in your lordship's hands a few days ago." (Diplom. Corr. 128.)

On the 25th, Lord Russell replied, stating that he had, without loss of time, referred the matter to the proper department. On the 1st of July, the persons to whom the matter was thus referred reported that the fitting out of this vessel had not escaped the attention of her majesty's revenue officers, and that, pursuant to directions, they had made inquiries of the builders, who did not deny that she is built for a foreign government, but "*do not appear disposed to answer any questions* as to her destination when she leaves Liverpool." The government are not shown to have taken any offence at this trifling, but, on the contrary, declined to interfere until further proof should be presented. This demand was not difficult to be complied with, for within a few days affidavits were produced to the Board of Customs, upon which the opinion of Mr. Collier, an eminent English lawyer, was first taken, who replied :

"It appears difficult to make out a stronger case of infringement of the Foreign Enlistment Act, which, if not enforced on this occasion, is little better than a dead letter." (Diplom. Corr. 152.)

A further delay was caused by the rejection of these affidavits on account of some technical defect in form ; but at last every captious objection being exhausted, copies of the perfected affidavits were, on the 23d of July, sent to Lord Russell ; but no action being taken, the Alabama went to sea at her leisure on the 29th. The flagrant delinquency of the government is admitted by Lord Russell on the 31st, in a conversation with Mr. Adams, at which time he stated that the delay of the government "*had been caused by the development of a sudden malady in Sir John D. Harding, the queen's advocate, totally incapacitating him for the transaction of business*. This made it necessary to call in other parties, whose opinion had at last been for a detention of the gunboat, but before the

order got down to Liverpool she was gone." It is not pretended that any expedition was used by the parties who came to the rescue of the government when Sir John D. Harding's "malady" assumed international importance, or that any attempt was made to delay the gunboat temporarily, until a decision could be arrived at; or that the telegraph or any extra-expedient means of communication with Liverpool was made use of when this decision was "at last" obtained.*

It should be stated, in justice to Earl Russell, however, that he declared his intention to send to Nassau to have the vessel intercepted; but in that connection let it also be remembered that *he did not send*; or at least that he did not send to the British squadron to seize her elsewhere in that neighborhood, and that the Alabama has avoided that point with as much shrewdness as if her captain were possessed in advance of the intention of the British cabinet; that, although she has been cruising in British West Indian waters for months, and has been for six days of the latter portion of the time lying in the British port of Kingston, to be refitted, no attempt has been made to seize or detain her, and that no prosecutions have been instituted against any of the many parties in England who infringed the Foreign Enlistment Act and the law of nations, by conniving at her escape and perfecting her armament afterwards in Terceira.†

* It may be remarked in passing, as a fair illustration of the fact, that a change in Lord Russell's stand-point of observation sometimes affects a change in his views of a subject; that while Great Britain was thus violating every legal, moral, and honorable obligation to us, she was insisting with pertinacity and almost imperiousness against those wholesome restrictions on trade between New York and Nassau, which the collector of this port found it necessary to adopt in order to prevent the sending of supplies to the rebels (Dip. Cor., 145, 304), and that the inadvertent act of a prize-master, the ludicrous character of which the following note will explain, was magnified into an insult to the English nation, fit to become a subject for diplomatic correspondence (Dip. Cor. 244).

"NEW YORK, Jan. 3, 1862.

"SIR:—I received your order to-day, stating for me to make a written statement and explain the reason for hoisting the English flag under the American Commodore; not being acquainted with the custom of bringing in prizes, I was under the impression that I was right. My intention was to do right, but it was not done for any bad purpose or intention to insult the English flag in any way whatever. I was wrong for so doing, and truly hope the department will forgive me.

"JOHN BAKER,

"Commodore PAULDING."

"Acting Master, U. S. N.

It appears by a letter from Commodore Wilkes to the Secretary of the Navy (Dip. Cor., p. 229), that the British gun-boat Bull Dog knowingly gave passage to rebel naval officers, on their way to England to take charge of the Alabama and other vessels of her character.

† As these sheets are going to press, I have received, through the courtesy of Mr. Grant, librarian of the Mercantile Library, a pamphlet just published in London, entitled, "The Alabama," from which the following extract is made:

"The '290,' as she was then called, sailed, as we have seen, from Liverpool on the

Having seen by this statement what the British government failed to do, let us inquire what it *ought to have done*. And since this country and England are bound to each other

29th of July, without register or clearance, under the command of Butcher, an English subject, who had been referred to in the deposition of Passmore. She picked up an additional fifty men off Point Lynass, and proceeded to Terceira in the Azores, where she anchored in the Portuguese waters; there she was shortly joined by a barque, the 'Agrippina,' which had sailed from the Thames with the greater portion of the privateer's guns and stores on board. The barque discharged her cargo into the '290,' which was still flying the British ensign, and when the Portuguese authorities interposed, the person Butcher, it is alleged, represented his vessel to be English, aiding the English barque, which he said was sinking. Another vessel shortly arrived from Liverpool, the steamer 'Bahama' (which was at first believed to be the U. S. steamer, 'Tuscarora,' causing some commotion on board), conveying the confederate officer Captain Semmes, with Bullock, and fifty additional men, and stores for the privateer. The Portuguese authorities then ordered all three vessels off, but they merely went to a secluded part of the coast, and completed the transshipment of the stores. The 'Bahama' cleared from Liverpool on the twelfth of August, having on board nineteen cases containing guns, gun-carriages, shot, rammers, &c., shipped by a firm of engineers and ironfounders of Liverpool. These cases were professedly shipped for Nassau. After the transfer of the cargo had been concluded Semmes took command, ran up the Confederate flag to the mast-head, and christened the new steamer the 'Alabama.' He read to the crew his commission from Jefferson Davis, as captain, and then made a speech, in which he explained the kind of warfare he proposed to wage, and called for volunteers. One hundred and ten of those on board consented, and forty refused, returning in the 'Bahama' to Liverpool. Of those who remained, it is stated, in a recently published letter from a Mr. Underhill, dated St. Thomas, West Indies, and which professes to give a narrative taken down from the lips of the boatswain of the 'Alabama,' during her passage from Liverpool to the Azores, that the most part belonged to the English Naval Reserve, all trained gunners, and that the crew receive from the Confederate government half the value of every American ship and cargo destroyed. The 'Bahama' took out gold to pay the crew, and after transferring her cargo returned with the barque to England, while the privateer set out on its mission of destruction."

The general bad faith, or, at the very least, criminal apathy of the British government in this matter, was so great as to draw from Mr. Adams this indignant declaration (Letter to Mr. Seward, Dip. Cor. 219): "It is very manifest that no disposition exists here to apply the powers of the government to the investigation of the acts complained of, flagrant as they are, or to the prosecution of offenders." Upon the part of Lord Russell, the correspondence is exceedingly ingenious in devising reasons for postponing the consideration of, or refusing to grant the demands of the American Minister. On the 4th of Sep. (Dip. Cor. 200) Mr. Adams, in writing to Lord Russell on the subject of the escape of the Alabama, July 29, was compelled to complain thus: "I have not yet received any reply in writing to my several notes and representations I have had the honor to submit to her majesty's government touching this flagrant case." The answer to this was at last received on the 22d, and consisted of excuses, among which Sir John D. Harding's "malady" does not appear. One may benevolently hope that Sir John D. Harding was able to forget it as easily as Lord John Russell. Let the reader contrast the churlish temper of the following letter, which is a fair specimen of Lord Russell's style, with the earnest, open, and liberal language of this government, as it will be hereinafter shown.

"FOREIGN OFFICE, Oct. 16, 1862.

"SIR:—I have the honor to acknowledge the receipt of your letter of the 9th inst., enclosing a copy of an intercepted letter which you had received from the United States government, bearing the further evidence with regard to the gun-boat '290;' . . . and with reference to your observations with regard to the infringement of the Foreign Enlistment Act, I have to remark, that it is true that the Foreign Enlistment Act, or any other act for the same purpose, can be evaded by very subtle contrivances; but her majesty's government cannot on that account go beyond the *letter* of the existing law." (Dip. Cor. 223)

Perhaps Lord Russell means that to *decide in time* is to go beyond the *letter* of the law; for it is of the failure to do that that Mr. Adams complains. The decision, as it was "at last" given, was entirely satisfactory, and had it been made known *before* instead of *after* the departure of the "290," the "letter" of the law, as Lord Russell understands it, might have been a little shattered, but the *spirit* of the law, which now lies wickedly violated, would have been preserved.

in mutual obligations of neutrality, arising from the same general law of nations, and from legislative enactments almost entirely similar, it is fair to show, first, how we conducted ourselves toward her at a time when our present positions were reversed.

America had scarcely taken upon herself the habitudes of a nation before she was called to perform her international obligations of neutrality. The circumstances involved great embarrassment. One belligerent was our friend, benefactor, and sister republic, France; the other was our enemy and late tyrant, England. We were weak and but poorly prepared to resist the importunities of our friend, to whom we owed so large a debt of gratitude. We were also entangled by treaty stipulations with her, under which she enjoyed certain privileges in our waters to the exclusion of England; and this again, together with a strong public sympathy for her, caused President Washington and his advisers great difficulty in securing for England an impartial observance of neutrality in the matters not touched by the treaty.

Yet, notwithstanding all this, President Washington, in the inaugural speech of his second term, proceeded to declare a strict rule of neutrality, under the law of nations, which has been faithfully observed to this day. (Speech to Congress, American State Papers. Foreign Relations, vol. 1. p. 21.) On the 22d of April, 1793, he issued his proclamation containing these words:

"I have given instructions to those officers to whom it belongs, to cause prosecutions to be instituted against all persons who shall, within the cognizance of the courts of the United States, violate the law of nations [we had no statute at that time] with respect to the powers at war, or any of them." (Ibid., 140.)

This was followed by written instructions from Alexander Hamilton, Secretary of the Treasury, to the collectors of the customs, requiring "the greatest vigilance, care, activity, and impartiality," in searching for and discovering any attempt to fit out vessels and expeditions, or send men, to the aid of either party (ibid. 140); and so strict were these requirements that Thomas Jefferson, Secretary of State, the great champion of neutrality, was compelled to denounce them as "setting up a system of espionage destructive to the peace of society." (Jeff. Works, vol. 9, 556; 3 ib. 556.) While Mr. Jefferson

declared in Cabinet Council (9 Jeff. W. 154), "It is inconsistent for a nation which has been patiently bearing for ten years the grossest insults and injuries from their late enemies, to rise at a feather against their friends and benefactors; and at a moment, too, when circumstances have kindled the most ardent affections of the two people towards each other;" he still wrote to the French representative, M. Ternant, demanding the cessation of the fitting out of certain privateers in Charleston (3 Jeff. 561); and to his successor, Citizen Genet (whom we afterwards sent home for endeavoring to make use of our harbors for such illegal purposes), "The fitting out of armed vessels against nations with whom we are at peace" is "instrumental to the annoyance of those nations, and thereby tends to compromit their peace," and "it is the duty of a neutral nation to prohibit such acts as would injure one of the warring parties." (Ibid. 571.)

One of the first cases demanding action by the government was that of the *Little Sarah*. Upon *the suggestion* by Mr. Hammond, the British representative, that she was being fitted as a French privateer, she was seized, and being found to contain a suspicious armament, was prevented from sailing. About the same time the British ship *Grange* was taken in American waters by the French war vessel *L'Embuscade*. The act was considered a breach of our sovereignty, and the prize seized and restored to her British owners. Numerous prizes were, on proof that the capturing vessels had been fitted out in the United States, restored to their owners. The government did not wait for action by the British representative, but held its own officers to the duty of vigilance. The governors of the States were frequently called upon to arrest vessels about departing (Hamilton's W., vol. 2, 463). In one case we find this language used:

"The case in question is that of a vessel armed, equipped and manned in a port of the United States, for the purpose of committing hostilities on a nation at peace with us.

"*As soon as it was perceived that such enterprises would be attempted, orders to prevent them were despatched to all the States and ports of the Union.* In consequence of these the governor of New York, receiving information that a sloop heretofore called the *Folly*, now the *Republican*, was fitting, arming and manning, to cruise against a nation with whom we were at peace, seized the vessel."

The President being apprized, ordered her and the persons

engaged to be delivered over to the tribunals for punishment. (3 Jeff. W. 386.) Such seizures were frequently made, the government entering into it as a matter of honor, not appearing to suppose that its duty would be performed by sitting coldly by until the British minister, under all the embarrassments of being a stranger, should produce irrefragable proof of infractions of its own laws. Gen. Washington seems to have considered it a shameful and humiliating excuse for a government to plead that it "is ignorant of what is carried on daily and repeatedly in its own country." It was impossible, however, with our limited navy, to prevent entirely such expeditions, and at last, at the risk of a war with our friend, it was resolved in Cabinet Council, on the 15th of August, 1793, "That the Minister of the French Republic be informed that the President considers the United States as bound by positive assurances given in conformity to the laws of neutrality, to effectuate the restoration of, or make compensation for, prizes which shall have been made of any of the parties at war with France, subsequent to the 5th day of June last, by privateers fitted out in their ports. That it is consequently expected that he will cause restitution to be made of all prizes taken and brought into our ports subsequent to the above-mentioned day by such privateers; in defect of which the *President considers it incumbent upon the United States to indemnify the owners of those prizes*; the indemnification to be reimbursed by the French nation." (4 Hamilton's Works, 468.) At the same time Mr. Jefferson's important letter to Mr. Hammond was written.*

* PHILADELPHIA, September 5, 1793.

SIR:—I am honored with yours of August 30th; mine of the 7th of that month assured that measures were taken for excluding from all further asylum in our ports, vessels armed in them to cruise on nations with which we are at peace, and for the restoration of the prizes, the "Lovely Lass," "Prince William," "Henry," and the "Jane, of Dublin;" and should the measures for restitution fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels.

We are bound by our treaties with three of the belligerent nations, by all the means in our power to protect and defend their vessels and effects in our ports, or waters or on the seas near our shores, and to recover and restore the same to the right owners, when taken from them. If all the means in our power are used, and fail in their effect, we are not bound by our treaties with those nations to make compensation.

Though we have no similar treaty with Great Britain, it was the opinion of the President that we should use toward that nation the same rule, which, under this article, was to govern us with the other nations; and even to extend it to captures made on the high seas and brought into our ports; if done by vessels which had been at war with them.

Having, for particular reasons, forborne to use all the means in our power for the restitution of the three vessels mentioned in my letter of August 7th, the President

The basis of this voluntary action of our government was, that sound maxim of the law of nations, that a state is *prima facie* responsible for whatever is done within its jurisdiction, since it must be presumed to be capable of preventing or punishing offences committed within its boundaries; and that a body politic is, therefore, responsible for the acts of individuals which are acts of actual or meditated hostility towards a nation, with which the government of these subjects professes to maintain relations of friendship or neutrality. (3 Phillimore's International Law, 218; Grotius, l. ii., c. 21, § 2; Puffendorf, l. i., c. 5, § ult.) In the year following, upon the application of England, and for her better protection (Canning's Speeches, vol. 4, pp. 152-3, Abr. Debates in Congress, vol. 7), we passed the act of 1794; and lastly, *and most important to be remembered* when the day of settlement comes, we, in that year, entered into a treaty of amity and commerce with her, by

thought it incumbent on the United States to make compensation for them. And though nothing was said in that letter of other vessels taken under like circumstances and brought in after the 5th of June, and before the date of that letter, yet when the same forbearance had taken place, it was and is his opinion that compensation will be equally due.

As to prizes made under the same circumstances, and brought in after the date of that letter, the President determined that all the means in our power should be used for their restitution. If these fail, as we should not be bound by our treaties to make compensation to the other powers in the analogous case, he did not mean to give an opinion that it ought to be done to Great Britain. But still, if any cases shall arise subsequent to that date, the circumstances of which shall place them on similar ground with those before it, the President would think compensation equally incumbent on the United States.

Instructions are given to the governors of the different states to use all the means in their power for restoring prizes of this last description, found within their ports. Though they will, of course, take measures to be informed of them, and the general government has given them the aid of the custom-house officers for this purpose, yet you will be sensible of the importance of multiplying the channels of their information as far as shall depend on yourself, or any person under your direction, in order that the governors may use the means in their power for making restitution.

Without knowledge of the capture they cannot restore it. It will always be best to give the notice to them directly; but any information which you shall be pleased to send me, also, at any time, shall be forwarded to them as quickly as distance will permit.

Hence you will perceive, sir, that the President contemplates restitution or compensation in the case before the 7th of August; and after that date restitution if it can be effected by any means in our power; and that it will be important you should substantiate the facts, that such prizes are in our ports or waters.

Your list of the privateers illicitly in our ports, is, I believe, correct.

With respect to losses by detention, waste, spoliation, sustained by vessels taken as before-mentioned, between the dates of June the 5th and August 7th, it is proposed, as a provisional measure, that the collector of the customs of the district, and the British consul or any other person you please, shall appoint persons to establish the value of the vessel and cargo at the time of her capture, and of her arrival in the port into which she is brought, according to their value in that port. If this shall be agreeable to you, and you will be pleased to signify it to me, with the names of the prizes understood to be of this description, instruction will be given accordingly, to the collector of the customs where the respective vessels are.

I have the honor to be, &c.

GEORGE HAMMOND, Esq.

THOMAS JEFFERSON.

which, on her demand, we undertook to pay to her and her citizens all losses suffered by armed vessels fitted out in our ports.*

Our conduct during this whole period received, and still receives, the commendation of all enlightened publicists. Phillimore and Ward are profuse in their praise of the justice, dignity, and intelligence, which marked the action of this government; and George Canning lost no opportunity in Parliament to urge an emulation of our example. In the debates, upon Lord Althorpe's petition for the repeal of the Foreign Enlistment Act (Hansard's Parl. Debates N. S., vol. 8, pp. 1019-59, Canning's Speeches, vol. 4, pp. 152-3), he said :

"It surely could not be forgotten, that, in 1794, this country complained of various breaches of neutrality (though much inferior to those now under consideration), committed on the part of subjects of the United States. What was the conduct of that nation in consequence? Did she resent the complaint as an infringement of her independence? *Did it refuse to take such steps as would insure the immediate observance of neutrality?* Neither. In 1794, immediately after the application from the British government, the legislature of the United States passed an act, prohibiting, under heavy penalties, the engagement of American citizens in the armies of any foreign powers.† Was that the only instance of the kind? It was but last year (1818) that the United States passed an act, by which the act of 1794 was confirmed in every respect, again prohibiting the engagement of their citizens in the service of any foreign powers; and pointing distinctly to the service of Spain or the South American provinces."

He might have added, had he spoken at a later period, that in 1838 we again, upon the request of Great Britain, called in legislative aid; this time to prevent succor to the Canadian rebellion. Again, in 1823, he said (Canning's Speeches, vol. 5, pp. 50-1) :

"If I wished for a guide in a system of neutrality, I would take that laid down by America in the days of the presidency of Washington and the secretaryship of Jefferson. Here, sir," he added, after stating what we had done, "I contend, is the principle on which we ought to act."

* Extract from 7th article of treaty of 1794: And whereas, certain merchants and others, his majesty's subjects, complain that in the course of the war they have sustained loss and damage by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction of the States, and brought into the ports of the same, or taken by vessels originally armed in the ports of the said States: It is agreed, that in all cases where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, of September 5th, 1793, the complaints of the parties shall be referred to the commissioners hereby appointed."

† It was because we stood by this very act, and would not permit Mr. Crampton to infringe it by recruiting for the war against Russia, that we were pressed almost to the point of hostilities in 1855.

After the treaty of 1794, the efforts of our government to prevent infractions of its neutrality were still increased.

In 1803 (President's Message, October 17), Mr. Jefferson said:

"We have seen, with sincere concern, the flames of war lighted up again in Europe; and nations, with which we have the most friendly and useful relations, engaged in mutual destruction. * * * In the course of this conflict, let it be our endeavor, as it is our interest, to cultivate the friendship of the belligerent nations *by every act of justice and innocent kindness*; to receive their armed vessels with hospitality from the distresses of the sea; but to administer the means of annoyance to none; to establish in our harbors such a police as may maintain law and order; to restrain our citizens from embarking, individually, in a war, in which their country has no part, *and to punish severely those persons, citizen or alien, who usurp our flag not entitled to it.*"*

In 1805, still greater vigor was announced. Mr. Jefferson, in the annual message of that year, says, after reciting certain infractions of our neutrality and sovereignty:

"These enormities appearing to be unreachd by any control of their sovereigns, I found it necessary to equip a force, to cruise within our own seas, to arrest all vessels of this description found hovering on our coasts within the limits of the Gulf Stream, and to bring in the offenders *for trial as pirates.*" (Am. State Pap., For. Rel., vol. 1, p. 66.)

In 1817, Spain was engaged in a contest with her colonies. The proximity of the scene of conflict, the sympathy which our people naturally held with the struggling colonies, and the adventurous character of our seamen, all combined to make interference feasible and attractive. Many attempts were made, the better to prevent which, we passed the act of 1818, alluded to by Mr. Canning. A voluminous correspondence took place between Don Luis de Onís, the Spanish minister, and the State Department, touching these armaments, a critical examination of which will show that the charges now constantly made by the English press, that our government was derelict at that time are not well founded.† Some vessels escaped, perhaps, in

* It is well known that the "Alabama" usually approaches her victims under the English flag; see papers in the matter of the "Brilliant," published by the New York Chamber of Commerce, 1862.

† The Spanish minister complained to our government that hostile expeditions were being fitted out in Louisiana, to aid the insurrectionary parties in South America. The complaint was immediately referred to the proper person, in New Orleans, and

spite of our vigilance. One case, which occurred in Baltimore, has been related to me by a gentleman who was cognizant of the fact. A suspected vessel had been seized, and, to prevent her going to sea before the matter could be investigated, her sails were taken from her and packed in a warehouse. After a time, the captain, who persistently asserted his innocence, asked permission to take the sails to spread them for drying, they being in danger of mildew. The port officer, a confiding, and not over-shrewd person, consented, and in the night the vessel slipped away, leaving the simple official to make the best settlement with his government that he could. Upon the final adjustment of the respective claims between Spain and the United States, it was not denied by us that we were liable to make compensation to sufferers by armed vessels, which we might have stopped; but, on the contrary, we took from Spain a release from all claims of this character, as part of the consideration for the concessions which we then made. (Treaty with Spain, 1819.) And on December 7th, 1819, President Monroe declared to the world, (annual message,) referring to Spanish matters:

“It is gratifying to have it in my power to state, so strong has been the sense throughout the whole community of what is due to the character and obligations of the nation, that very few examples of a contrary kind have occurred.”

In 1838, our government was again zealous in the enforcement of what had by this time become its traditional policy; and used its most vigorous efforts in endeavoring to prevent

the result was, that our own officers were set to work, without Spanish aid, and succeeded in breaking up almost entirely the system.

Many persons were prosecuted and seven vessels seized, of which, three being found guilty, were condemned. Nine or ten prizes were libelled and restored to their Spanish owners, on the ground that the capturing vessels had been fitted out and armed, or had their forces augmented in the waters of the United States. Mr. Dick, the United States District Attorney, says, “It is notorious, that to no one point of duty have the civil and military authorities of the United States more strenuously, or, it is believed, more successfully, devoted their attention, than to the discovering and suppressing all attempts to violate the laws in this respect. Such attempts have never been successful, except when conducted under circumstances of concealment that eluded discovery and almost suspicion; or when carried on at some remote point of the coast, beyond the reach of detection or discovery. In every instance where it was known that these illegal acts were attempting, or where it was afterwards discovered that they had been committed, the persons engaged, so far as they were known, were prosecuted, while the vessels fitted out or attempted to be fitted out, have been seized and libelled, under the act of 5th June, 1794; and when captures have been made by vessels thus fitted and armed, and their force augmented in our waters, and the prizes brought within our waters, or even found upon the high seas by our cruisers, they have been restored to the Spanish owner, and in some instances damages awarded against the captors.” Niles’ Reg., p. 63.

all interference by our people in the disturbances then existing in Canada. In an official letter, Mr. Webster says:

“The President directs me to say that it is his fixed resolution that all such disturbers of the public peace and violators of the laws of their country shall be brought to *exemplary punishment*.” (Webster’s Works, vol. 6, p. 260.)

In the same volume Mr. Webster refers to the fixed American doctrine on this subject, especially the practice of directing our officers to watch for infringements of neutrality, without waiting for information, and cites the instructions given our army during the war for Texan independence. (Ibid. p. 452.)

The next occasion on which Great Britain, by taking a belligerent attitude, forced upon us the embarrassment and annoyance of the neutral character, was during the war with Russia, in 1854–6. It has been very loosely charged that, at that time, armaments for Russia were permitted to go on here, and that some war-vessels intended for that nation escaped. The best investigation which I have been able to give to that period fails to discover any vessel which can be traced to the Russians, or which ever caused, or attempted to cause, damage to the other belligerents. During that war, much excitement was caused in England by the announcement that the barque Maury, of New York, belonging to a highly respectable mercantile firm (the owners of the Jacob Bell, lately burned by the Florida), had been detected in shipping arms to the enemy, and had been seized. The real truth about that matter seems never yet to have reached the British public. The facts were, that the barque was openly advertised for China, and was loading on freight. She was seized on the application of the British consul, sustained by very suspicious affidavits. An examination of her cargo, &c., proved her innocence, and the consul made a public apology in the columns of the New York Herald of October 24, 1855, for the seizure.* The owners did not let the matter rest, however, but procured an investi-

* The following letter will show the motives and promptness with which our government then acted :

ATTORNEY-GENERAL’S OFFICE, 22d October, 1855.

SIR:—I have received your letter of the 19th instant, communicating the result of inquiry regarding the barque “Maury.”

The allegation against that vessel was improbable on its face ; but, determined as the President is not to suffer any of the belligerent powers to trespass on the neutral rights of the United States, it was deemed proper to investigate the case, out of re-

gation by the New York Chamber of Commerce, a committee of which body, composed of gentlemen whose probity cannot be doubted, reported, among other things:

"The committee have it from the highest authority, that the Government has no knowledge, belief, or suspicion, that any privateer or other armed vessel is fitting out, or has been fitted out, in this country, for or against any of the European belligerents."* (Report on seizure of the barque Maury, N. Y. Chamb. Com., 1855.)

spect for the British minister, through whom the British consul at New York, preferred complaint in the premises.

It is made manifest, by the documents which you transmit, that the suspicions of the British consul as to the character and destination of the "Maury," were wholly erroneous; and justice to her owners and freighters requires that the libel against her be dismissed.

I have the honor to be,

Very respectfully,

C. CUSHING.

Hon. JOHN McKEON,

Attorney of United States, New York.

* At the same time the Chamber of Commerce passed the following resolutions which they justly claimed as expressing the universal sentiment of the American public:

"1. *Resolved*, That the Chamber of Commerce of New York receive and adopt the report as a correct statement, and as containing the sense of this body on the subject.

"2. *Resolved*, That no proper amends or apology have been made to A. A. Low & Brothers, for the charge brought against them, which, if true, would have rendered them infamous; nor to the merchants of this city and country, so falsely and injuriously assailed.

"3. *Resolved*, That the merchants of New York, as part of the body of merchants of the United States, will uphold the government in the full maintenance of the neutrality laws of the country; and we acknowledge and adopt, and always have regarded, the acts of the United States for preserving its neutrality as binding in honor and conscience, as well as in law; and that we denounce those who violate them as disturbers of the peace of the world, to be held in universal abhorrence."

It would be impossible to illustrate the difference of conduct on the part of England and America, better than by printing side by side the papers in the cases of the "Maury" and the "Alabama." That cannot be done here for want of space, but substantially the facts were as follows:

The British consul through the British Minister gave notice to our government that "a person (name not given), who deponent believes to be in the pay of Russia, has given him a full explanation of the armament on board the said vessel;" . . . also, that this deponent "gathered from the person in question that the said 'Maury' would, when outside, ship a new crew of about eighty men," &c., to go in pursuit of the Cunard steamers. This statement of the consul's was backed by the affidavits of two policemen, who swore upon information and belief that the vessel was fitted out as a Russian privateer, but stated no other information or ground of belief than she had taken on board some cannon, small arms, and cannon ball, and that the mate said that it was a "damned queer cargo" for the China Seas. Our government, as appears by Mr Cushing's letter, considered "the allegation against the vessel as improbable on its face," but still ordered it to be seized and held until the truth could be ascertained. The seizure of the vessel was the first notice to the owners that any suspicion of her was entertained; and they immediately made a full and frank statement concerning her, by which and the subsequent investigation it appeared that she was loading on freight for China; that there was nothing peculiar about her rig or build; and that the cannon were shipped on freight to an American gentleman in Canton; and that the addition to her armament of two guns was on account of the increasing danger from Chinese pirates. The libel was after these explanations "lifted," with the consent of the counsel for the British consul.

The distinguishing features of this case are the promptness with which the vessel was seized and held until the suspicions against her should be removed; and the readiness of the owners to give all information concerning her.

In the case of the "Alabama," as has been shown, the British government refused to interfere with the freedom of the suspected vessel until proof sufficient to *convict* her was produced, and by their captiousness and delay gave her plenty of time to get away before any proceedings could be instituted; and meanwhile her owners, though admitting that she was a war-vessel built for a foreign government, refused to give any further information about her.

One of the affidavits presented to the Board of Customs and Lord Russell, was that of William

The case of the Grand Admiral is another frequently alluded to by the British press, and it is only necessary to say that this ship was ordered by the Russian government before the outbreak of hostilities; that its construction was suspended during the whole of the war; and that she did not sail from this country until 1859, three years after peace was declared. (See letter of W. H. Webb, Esq., published by N. Y. Chamb. of Com., 1863.)

The purchase and clearance of the steamship "United States" is now being made use of by those English journals which are conducted in the interest of the rebellion, to justify, by an American precedent, the piratical enterprises in which British merchants are now engaged. In this, as in all the other cases, an American may well say:

"Mark, now, how plain a tale shall put you down."

In 1848, an attempt was made to consolidate the German people into one government. The new government sent commissioners to this country to purchase some steam war vessels. The commissioners addressed our government, openly through the German minister, and the President, in courtesy, granted the services of some of our naval officers to aid in the selection, and the use of our navy-yard, for the refitting of the steamer in question. While this was going on, the government at Washington were informed that the purchasers of this steamer were in some way parties to a petty controversy, then progressing, under the name of the Schleswig-Holstein war. Upon receipt of this information, all facilities for finishing the vessel were at once withdrawn, and it was only after a long negotiation that she was permitted to sail, without arms, with just men enough to take her across the Atlantic; and only after having given bonds in \$900,000 that she should *never* be used against any nation with whom we were at peace. She reached Liverpool, and there remained until peace was de-

Passmore, who swore he had been engaged by Capt. Butcher to sail in the "290," with the express understanding that she was going to fight for the "government of the Confederate States of America." That he had joined the vessel in Messrs. Laird & Co.'s yard at Birkenhead, and remained on her several days. That he found about thirty old men-of-war's men on board, among whom it was "well known that she was going out as a privateer for the Confederate government to act against the United States, under a commission from Mr. Jefferson Davis."

Yet, this affidavit, proving, *prima facie*, as it does the character of the vessel, was, with others sustaining it, in the hands of English officials for at least ten days before they were able to determine whether they should take the precaution of holding the vessel to abide the event of examination. Nor has any action yet been taken against Capt. Butcher for a criminal infringement of the 2d section of 59 Geo. III., which, under severe penalties, forbids the hiring or enlisting any man to serve against a friendly nation.

The distinguishing features of this case do not require to be pointed out.

clared, and, shortly after, was changed into a passenger-ship, and plied between this port and Galway, as the "Indian Empire." (Letter of Leopold Bierwith, Esq., pub. by N. Y. Chamb. of Com., 1863.)

Thus stands the record of American neutrality. History may be fairly challenged to show another instance of such magnanimity, consistency, and fairness.

Should we examine thoroughly the record of Great Britain upon this matter of maritime neutrality, it would be found entirely consistent on one point—"Britannia rules the waves." To express the probable reasons for whatever *inconsistencies* on other points history might discover, would necessitate harsh allusions to that national greed and arrogance which the traditions of mankind have ascribed to the insular kingdom. And since it is not the purpose of this discussion to revive memories of past misconduct, but instead, to discover the true, legal, and moral obligations which bind nations as they may be derived from instances of past good conduct, it will be necessary to cite but two cases—and those the most notable—in which Great Britain has been called upon to declare her understanding of what true neutrality consists in. It will be seen that in one case she demands, and in the other performs, neutrality.

The first instance has special relation to rebellion, being the protest of England against the clandestine assistance which France permitted her citizens to give the revolted American colonies, *or rather her statement of reasons justifying war upon France for that cause.* The written statement of these just grounds of war is found in the celebrated *Memoire Justificatif*, understood to have been prepared for the king by the historian Gibbon. But for the proper names and dates there given, one might suppose that Mr. Gibbon, with prophetic foresight, had prepared this document for presentation by Mr. Adams to the English government of the present day.*

* The following extracts are made from the *Memoire Justificatif*, which may be found printed in full in the British Annual Register for 1779, vol. xxii., p. 404.

"An enterprise so vain and so difficult as that of hiding from the eyes of Great Britain and of all Europe the proceedings of a commercial company associated for furnishing the Americans with whatever could nourish and maintain the fire of a revolt, was not attempted. The informed public named the chief of the enterprise, whose house was established at Paris; his correspondents at Dunkirk, Nantz, and Bordeaux, were equally known. The immense magazines which they formed, and which they replenished every day, were laden in ships that they built or bought, and they scarcely dissembled their objects or the place of their destination. These vessels commonly took false clearances for the French islands in America, but the commodities which composed their cargoes were sufficient before the time of their

The instance selected to show to what length Great Britain feels herself bound to go in the performance of neutral obligations relates to the conflict between Donna Maria and Don Miguel for the crown of Portugal. In 1827, Don Pedro, having retained to himself the empire of the Brazils, formally renounced the throne of Portugal in favor of his daughter, Donna Maria, and appointed his brother, Don Miguel, regent of the kingdom. Donna Maria was recognized by Great Britain and all the great powers as the lawful sovereign of Portugal. In 1828, however, Don Miguel induced a revolt, procured him-

sailing to discover the fraud and artifice. These suspicions were quickly confirmed by the course they held, and at the end of a few weeks it was not surprising to hear they had fallen into the hands of the king's officers, cruising in the American seas, who took them even within sight of the coasts of the revolted colonies. This vigilance was but too well justified by the conduct of those who had the luck or cunning to escape it, since they approached America only to deliver to the rebels the arms and ammunition which they had taken on board for their service. The inarks of these facts, which could be considered only as manifest breaches of the faith of treaties, multiplied continually, and the diligence of the king's ambassador to communicate his complaint and proofs to the court of Versailles, did not leave him the shameful and humiliating resource of appearing ignorant of what was carried on and daily repeated in the very heart of the country. He pointed out the names, number, and quality of the ships that the commercial agents of America had fitted out in the ports of France, to carry to the rebels arms, warlike stores, and even French officers who had engaged in the service of the revolted colonies. The dates, places, and persons, were always specified with a precision that afforded the ministers of his most Christian majesty the greatest facility of being assured of these reports and of stopping in time the progress of these illicit armaments. Among a crowd of examples which accuse the court of Versailles of want of attention to fulfil the conditions of peace, or rather its constant attention to nourish fear and discord, it is impossible to enumerate them all—it is very difficult to select the most striking objects.

"Nine large ships, fitted out and freighted by the *Sieur de Beaumarchais* and his partners, in the month of January, 1777, are not confounded with the *Amphitrite*, which carried about the same time a great quantity of ammunition and thirty French officers, who passed with impunity into the service of the rebels. Every month, almost every day, furnished new subjects of complaint; and a short memorial that *Viscount Stormont*, the king's ambassador, communicated to the *Count de Vergennes* in the month of November in the same year, will give a just but very imperfect idea of the wrongs which Britain had so often sustained.

"There is a sixty-gun ship at *Rockport*, and an *East India* ship, pierced for sixty guns, at *L'Orient*. These two ships are destined for the service of the rebels. They are laden with different merchandize, and freighted by *Messrs. Cleaumont, Holken & Lebatier*. The ship *L'Heureux* sailed from *Marseilles* the 26th of September under another name; she goes straight to *New Hampshire*, though it is pretended she is bound to the *French Islands*. They have been permitted to take on board three thousand muskets and twenty-five thousand pounds of sulphur—a merchandize as necessary to the Americans as useless to the islands. This ship is commanded by *M. Lundi*, a French officer of distinction, formerly lieutenant to *M. de Bouganville*. *L'Hippopotame*, belonging to the *Sieur Beaumarchais*, will have on board four thousand muskets and many warlike stores for the use of the rebels. There are about fifty French ships laden with ammunition for the use of the rebels, preparing to sail to *North America*. They will go from *Nantz, L'Orient, St. Malo, Havre, Bordeaux, Bayonne*, and other different ports. These are the names of some of the persons principally interested, *M. Cleaumont, M. Menton,* &c., &c.

"In this kingdom, where the will of the prince meets with no obstacle, succors so considerable, so public, so long supported, in fine, so necessary to maintain the war in America, show clearly enough the most secret intentions of the most Christian king's ministers. But they still carried further their forgetfulness or contempt of the most solemn engagements, and it was not without their permission that an un-

self to be proclaimed king, and succeeded in expelling the queen and her friends from most of her dominions. Terceira, one of the Azore Islands, remained faithful to her and in her possession. The Brazilian envoy at London applied to the British government for assistance, on the ground that the queen was the legitimate sovereign and Don Miguel a usurper. These facts were admitted by Lord Aberdeen, who refused assistance, however, assigning as the reason that, as England could not take notice of the merits of the domestic quarrels of another country, she must therefore conduct herself between the two according to *the strict rule of duty governing neutral nations*. About this time a number of Portuguese refugees arrived in England and took up their residence in Portsmouth. It was *suspected* (I quote the language of Phillimore) that they were

derhand and dangerous war issued from the ports of France under the deceitful mask of peace and the pretended flag of the American colonies, The favorable reception that their agents found with the ministers of the court of Versailles, quickly encouraged them to form and execute the audacious project of establishing a place of arms in the country which had served them for an asylum. They had brought with them, or knew how to fabricate, letters of marque in the name of the American Congress, who had the impudence to usurp all the rights of sovereignty. The partnership, whose interested views easily embarked in all their designs, fitted out ships that they had either built or purchased. They armed them to cruise in the European seas; nay, even on the coasts of Great Britain. To save appearances, the captains of those corsairs hoisted the pretended American flag, but their crews were always composed of a great number of Frenchmen, who entered with impunity under the very eyes of their governors and the officers of the maritime provinces. And numerous swarms of these corsairs, animated by a spirit of rapine, sailed from the ports of France, and after cruising in the British seas, re-entered or took shelter in the same ports. * * * * *

"To the first representation of the king's ambassadors upon the subject of the privateers which were fitted out in the ports of France under American colors, the ministers of his most Christian majesty replied, with expressions of surprise and indignation, and by a positive declaration that attempts so contrary to the faith of treaties and the public tranquillity should never be suffered. The train of events, of which a small number have been shown, soon manifested the inconstancy, or rather the falsehood, of the court of Versailles; and the king's ambassador was ordered to represent to the French ministers the serious but inevitable consequences of their policy. He fulfilled his commission with all the consideration due to a respectable power, the preservation of whose friendship was desired, but with a friendship worthy of a sovereign, and a nation little accustomed to do or to suffer injustice. The court of Versailles was called upon to explain its conduct and intentions without delay or evasion, and the king proposed to it the alternative of peace or war. France chose peace, in order to wound her enemy more surely and secretly, without having anything to dread from her justice. She severely condemned those successors and those armaments, that the principles of public equity would not permit her to justify. She declared to the king's ambassador that she was resolved to banish the American corsairs immediately from all the ports of France, never to return again; and that she would take, in future, the most rigorous precautions to prevent the sale of prizes taken from the subjects of Great Britain. The orders given to that effect astonished the partisans of the rebels, and seemed to check the progress of the evil; but subjects of complaint sprung up again daily; and the manner in which these orders were first eluded, then violated, and at length entirely forgotten by the merchants, privateers, nay, even by the royal officers, were not excusable by the protestations of friendship, with which the court of Versailles accompanied those infractions of peace, until the very moment that the treaty of alliance, which it had signed with the agents of the revolted American colonies, was announced by the French ambassador in London."

meditating to fit out some expedition from these ports against Don Miguel, and the government, holding that to permit this would be a breach of neutrality, informed the Brazilian minister that it would allow no such design to be carried on in British harbors, and that, *for security's sake, the refugees must remove farther from the coast.* The envoy stated that those troops were about to be *conveyed to Brazil*, and accordingly four vessels, having on board six hundred and twenty-five unarmed men, sailed from Plymouth. The government *suspected* that the true design was to land these troops on *Terceira*, and, having given them notice before they sailed that any such attempt would be resisted, dispatched a fleet of armed vessels to *watch* and prevent a landing. The expedition appeared off *Terceira*, and, being perceived by the English captain, was fired into and stopped, one man being killed. The Portuguese commander insisted upon his right to disembark upon the loyal territory of his sovereign, but being unarmed was unable to enforce his right, and his whole expedition was conducted several hundred miles to sea and there left, the English fleet returning to stand guard at the island. This act caused great excitement in England, and in Parliament the questions of international law involved were discussed with much ability. The government defended itself on the ground "that the refugees had fitted out a warlike armament in a British port; that the armament, having been equipped under the disguise of going to Brazil, had not been stopped before sailing; *and that they were therefore bound, by the duty of neutrality, to prevent by force an armament so equipped from disembarking, even in the Queen of Portugal's dominions.*" The government was supported by a majority in both houses of Parliament. (Br. Annual Register for 1829; 3 Philli., 229.)

Thus we have, by a fair examination of the customary law of nations, and the general conduct thereunder of England and America respectively, arrived at a point from which we may look about us and obtain a tolerably clear view of the legal conclusions and consequences which follow and belong to the unneutral acts of permitting the initial departure, the continued depredations, subsequent return, refitting, and departure of the Alabama and Florida from British ports. From this general view we perceive, as a matter of law, that neutrals are bound at all hazards to prevent, among other things, the fitting out in their

dominions of warlike expeditions and armaments against either belligerent ; we see also, from the law and practice of Great Britain in other cases, that all facilities for this purpose exist in that kingdom, and that they may be and have been employed by the authorities of their own motion ; and we gather, from the spirit and language of the *Memoire Justificatif*, that, in 1779, Great Britain considered that the practice of casting upon the representatives of the offended belligerent—strangers in the land—all the burden of proving the guilty character of such enterprises before any intervention of the neutral government can be obtained, is but little better than a fraudulent evasion of international duties. We gather also that America, in 1793, and at all times since, has acted in good faith upon the same opinion, always interposing at the request of foreign powers and requiring its own officers to be vigilant and positive in the effort to detect and suppress unneutral preparations ; and that as between this nation and Great Britain the latter has demanded and we have always rendered the fullest and freest performance of neutral obligations. It is also seen that by reason and usage the failure of a neutral nation to perform in good faith, and to the best of its ability, its obligations in this respect, is deemed to sustain a claim for compensation for all pecuniary damage growing out of its derelictions ; and even to justify reprisals and absolute war.

Yet, notwithstanding all this, we find that Great Britain has permitted, within her harbors and domain, the fitting out of armaments *notoriously* intended to cruise against our commerce ; and that the hostile armament has been permitted to sail unopposed from English shores upon its criminal business of lighting up the seas with burning merchantmen, days after the government had been in possession of what itself admitted to be sufficient proof of its clandestine character. Indeed, on the contrary from the *Alabama* being opposed, it is stated by the press, that the officials of the “circumlocution office,” in the prosecution of the great business of “How not to do it,” decided upon the value of a breach of the law of nations, by receiving a bond of twenty thousand pounds as the consideration and indemnification for permitting the *Alabama* to proceed to sea, thus making the British nation a partner in her crimes and surety for all her acts of pecuniary damage. And the only excuse for this unprecedented fraud is drawn from the

state of a queen's advocate's digestion ; national honor, international justice, and the peace of great nations bound up with the bandages of Sir John D. Harding's gouty toe ! Moreover, although the culprit defies English revenue laws by sailing without a clearance ; and although the true nature of her voyage is soon made known in England by her burnings and destroyings ; and although she was known to be destined for the neighborhood of certain British ports, and does in fact make her appearance and cruise there for months, she is at the end of that time permitted to enter and lie in safety in a British port, without any effort to seize or detain her ; but, on the contrary, the local authorities of Kingston are seen coming actively to her assistance, and returning her escaped crew by force, the same as if she were a lawfully commissioned vessel, with whom the seamen might have a lawful contract of service.

The legal liabilities which, under these circumstances, attach to the offending nation, are easily understood. Every nation, while it maintains the semblance of domestic government, is responsible for the execution of its own laws, especially such as are, in their nature, promises or compacts with other nations.* If the Confederate States were an independent and recognized nation, so that these vessels could have a *bona fide* national character, England would still, under the circumstances of their outfit, be responsible for them as if they were her own. And this would be so even if all the persons engaged in the matter were foreigners in England ; for a stranger owes the same allegiance to the laws of a country, while he remains in it, as a citizen ; and the law has equal power over him to compel his obedience ; and, consequently, the government of the State has no ground here for a distinction as to the liability it shall bear. It was upon this principle that, by the treaty of 1794, this nation agreed to make com-

* Indeed, a state may not take refuge behind defects of its municipal laws ; for it is bound at its own peril to provide effective domestic machinery to execute its international duties. It was upon this principal that England stood in the matter of Alexander McLeod in 1838. McLeod had done an act for the British government, for which he was arrested as an offender against the laws of *New York*. His government avowed the responsibility of his act, and demanded from the *United States* his release. The Secretary of State, Mr. Webster, admitted, that since the act had been done under orders, it was no longer an individual offence, but a matter between the two nations, and recommended his release, but explained that the Federal Government had no power to take him from the custody of the state officers. England refused—very properly—to entertain as an excuse any defect in our system ; saying, that every nation, pretending to hold relations with other nations, is bound to provide itself with the power to meet all just demands ; and had not the New York jury disagreed at the trial, we should have had war upon that question.

pensation for damages inflicted by French privateers fitted out in our ports. The philosophic statement of the principle is given by Burlemaqui, who cites Grotius and Heineccius, and is in turn cited by Phillimore (vol. ii., p. 230), with approval, in these words:

“In civil societies, when a particular member has done an injury to a stranger, the governor of the commonwealth is sometimes responsible for it, so that war may be declared against him on that account. But to ground this kind of imputation, we must necessarily suppose one of these two things, sufferance or reception, viz.: either that the sovereign has permitted this harm to be done to the stranger, or that he afforded a retreat to the criminal. In the former case, it must be laid down as a maxim, that a sovereign who, knowing the crimes of his subjects—as, for example, that they practise piracy on strangers—and, being able and obliged to hinder it, does not hinder it, renders himself criminal, because he has consented to the bad action. . . . Now it is presumed that a sovereign knows what his subjects openly and frequently commit; and as to his power of preventing the evil, this is always presumed, unless the want of it be clearly proved.”

This principle extends, it will be perceived, so far as to make the neutral sovereign *prima facie* responsible for the un-neutral acts of the belligerents when done or initiated within his jurisdiction. All the more is he bound to prevent, or if he does not prevent, to compensate for such acts done by his own subjects; and the question remains, although no longer of the first importance, *What is the national character of the Oreto and Alabama?* Each of those vessels was entirely built, equipped, and fitted, in British waters by Englishmen. They are permitted to enter and lie in British ports as safely as if they were commissioned in her Majesty's service, at the same time that our cruisers are warned off, and forbidden, even when in distress, to enter for coal—as in the cases of the *Tuscarora*, *Flambeau*, and *Saginaw*. The *Oreto* went to sea with a crew consisting of fifty-two Englishmen and one American. She sailed under English papers for a legitimate port. Both were, at or about their departure, ascertained to be the private property of Englishmen. Unless some change of title has taken place, these vessels are yet owned in England by Englishmen. If any such change has taken place, to whom has the title passed? Not to the Confederate States, or any rebellious citizen of that portion of this nation; for, as between England and the rest of the world, these rebels are to be con-

sidered belligerents, and no contract between a citizen of a neutral state and a belligerent, to aid in any way the prosecution of war, is lawful; *on the contrary, every such agreement is, ab initio, void*, and these vessels still remain the property of the British citizens who built them. The principle of law here stated has been decided solemnly in both England and America. The English case is *Demetrius de Wütz v. Hendricks* (9 Moore, C. P. Rep., 586-7; tried in 1824). The facts of that case involved a contract to raise money to aid the Greeks in their revolt against the Porte, the plaintiff claiming to act for the exarch of Ravenna, under power of attorney, and the defendant being an English broker. The contract was declared by Lord Chief Justice Best to be void by the law of nations. The principal American case is *Kennett v. Chambers* (14 How. U. S. Rep., 38, 44). The facts were that Chambers, a Texan general, had agreed to convey a large tract of Texan lands in consideration of advances made, and to be made, at Cincinnati, for the purpose of aiding the Texans to carry on the revolution against Mexico, with which power we were at peace. The contract was made at Cincinnati, in 1836, and the independence of Texas was not recognized by the President of the United States until 1837. A bill having been filed to obtain a specific performance of the contract to convey, the Court refused to enforce it, saying, "the contract is not only void, but the parties who advanced the money were liable to be punished in a criminal prosecution for a violation of the neutrality laws of the United States."

Thus, it is seen that the *Oreto* and *Alabama*, originally sailing from English ports, manned by English law-breakers, are still the property of English owners; because all attempts on their part, if any such have been made, to convey their interests to our rebellious citizens, or any one of them, are absolutely void and of no effect. And it is a fair question for judicial and professional consideration, *whether, in addition to the criminal proceedings given by the Foreign Enlistment Act, the owners of the Jacob Bell may not have their action for damages against Fawcett, Preston & Co., of Liverpool, the owners of the Florida; and the owners of the Brilliant, and other vessels destroyed by the Alabama, their respective actions against Messrs. Laird, of Birkenhead, the reputed owners of that vessel.*

One more, interesting, but still less important question, practically, relates to the specific character of these vessels and their crews. Are they pirates? Piracy is defined to be the offence of depredating upon the high seas, *without being authorized by any sovereign state*. (Wheat. Int. L., P. 2, c. 2, § 15.) These English sea-rovers claim, doubtless, to cruise under some kind of commission from the self-styled and unrecognized "Confederate States." I do not propose to discuss, with much seriousness, here, a question, which being in this place of little import, may hereafter, in a different discussion, become of the first magnitude; still, I am compelled to say that, by the law and practice of nations, it appears that no commission from an unknown, unrecognized authority can relieve the persons upon those vessels from the character of pirates, liable to punishment as such by any nation who may have the power and the will to enforce the penalties for that crime. Hautefeuille says (*Des Nations Neutres*, tit. 3, ch. 2):

"It is admitted by all nations, that in maritime wars every individual who commits acts of hostility without having received a *regular commission from his sovereign, however regularly he may make war*, is regarded and treated as guilty of piracy."

From what sovereign have the commanders of the Florida and Alabama received commissions? Although, in view of what we now know has been done, it may be rash, I yet venture to assume that it is not from her Majesty; certainly not from the executive head of this nation. There is no government, such as they claim to represent, in existence—at least, having any such existence as would afford a legal protection to them in case some nation which has not conceded to them belligerent rights, should choose to seize and try them as pirates:

"For it is a firmly-established rule of British, American, and, indeed, all jurisprudence, that it belongs exclusively to governments to recognize new States; and that until such recognition, *either by the government of the country in whose tribunal the suit is brought, or by the government to which the new state belongs*, courts of justice are bound to consider *the ancient state of things as existing*." (2 Phillimore 25; *Rose v. Himnely* 4 Cranch, 272; *Hoyt v. Gelston* 3 Wheat. 324.)

Nor would it avail these men to plead that they are not—according to the general description of pirates—enemies to all mankind; for in the case of the Magellan pirates, in 1851 (see the *Jurist*), the learned Dr. Lushington, of the High Court of

Admiralty, declared, concerning the law of nations relating to pirates:

"If it was clearly proved that the accused committed robbery and murder on the high seas, they were adjudged to be pirates, and suffered accordingly. . . . It does not follow that, because rebels and insurgents may commit against the ruling powers of their own country, acts of violence, they may not commit piratical acts against the subjects of other states.

The same question arose shortly after the abdication of James II., in a manner to make it, in all essentials, precisely parallel to the one on hand.

"That case involved a discussion of the general principle, whether, a deposed sovereign, claiming to be sovereign *de jure*, might lawfully commission privateers against the subjects and adherents of the sovereign *de facto* on the throne; or whether they were to be regarded as pirates, inasmuch as they were sailing *animo furandi et deprædendi* without any national character."

And, after stating at length the argument on both sides, Mr. Phillimore gives as his judgment;

"That, after allowing every deduction in their favor, the reason of the thing must be allowed to preponderate greatly towards the opinion of Tindal, that these privateersmen were, by the law of nations, pirates." (1 Philli. 398-406.)

But, whatever may be the correct judgment upon this point, one thing is certain, that all the character these vessels possess, is British; and that if they are pirates at all, they are BRITISH PIRATES, roaming the seas, with the implied permission, if not actual connivance, of that government; and that for the depredations of these vessels, Great Britain is, by the spirit of the law, the usage of nations, and, especially, the precedent established in her favor and on her demand in 1794, bound to pay, even to the last dollar of loss.

I have undertaken this hasty investigation, on account of the importance which international affairs are assuming in consequence of the outrages of these lawless rovers, and because of the prevalent ignorance—in which I fully shared—as to the true character and extent of our right in the premises. Fortunately, the historical facts which have been cited, are such as carry the argument upon their face; and, for the few conclusions which it has been necessary to draw, it is not doubted that they will be found by those who may give this grave subject more deliberate consideration—to be, in all essential characteristics, sustained by both the letter and spirit of the law. For the purpose of a brief recapitulation, these conclusions may be

stated as follows: First. The obligation of neutrality which Great Britain owes this nation is based on international law, international comity, gratitude, the spirit of treaties, and, last and not least, upon that compact with all the world, called the Act of 59 Geo. III. Second. That international law is the science of the *external* relations of nations, and that its sanctions are neither derived from nor dependent upon things municipal, but bear equally upon democracies, aristocracies, and despotisms. Third. For this reason, no government can excuse itself from full performance of its international obligations by the suggestion of any lack of internal authority; and within the scope of this proposition, it may be safely asserted that, if that radical defect in the internal organization of this republic, which prevented the President of the United States from exercising control over the sheriff of an interior county of New York, was not a good excuse in McLeod's case, England will hardly make a defect of power in her revenue officers suffice in the matter of the Florida; nor a queen's advocate's "malady" in that of the Alabama. Fourth. That it was the duty of the British government in both cases, after the application of Mr. Adams, to have followed the "Maury" precedent by seizing and holding the vessels, and thus preventing mischief, until a full investigation could have been had; and having failed in this, it was a duty all the more imperative, when the real purpose of these vessels was known, to follow the Portuguese-Terceira precedent, by sending British cruisers to the ends of the earth, to prevent the consummation of the fraud, as well as bring the criminals to justice for their offence against the dignity and peace of England. Fifth. That the action of the British government, certainly, and its motive, apparently, have been grossly in breach of its neutral obligations. Sixth. That it is a maxim in universal justice, as well as in the common law, that there is no wrong without a remedy; and the remedies for these injuries are of two kinds: 1st, by civil action and criminal prosecution against the English owners, their servants, agents, and abettors; and, 2d, by the demand, and receipt from that government, of full compensation to private sufferers; and in default of the latter, by reprisals and war.

And, in justification of such a war, we may appeal to English state papers, where the reasons will be found, set out with all requisite particularity by England's greatest historian for one of her greatest kings.