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DUTIES OF NEUTRALITY.

THE UNITED STATES

vs.

THE STEAMSHIP 'METEOR,'

&c., &c., &c.

In Admiralty.

CLOSING ARGUMENT IN BEHALF OF THE UNITED STATES,

BY

SIDNEY WEBSTER.

REPORTED BY UNDERHILL & WARBURTON, LAW STENOGRAPHERS.

NEW YORK:
JOHN F. TROW & CO., PRINTERS,
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ARGUMENT.

If it please the Court:

It has been my endeavor, by a careful review of the learned and elaborate argument of the counsel for the claimants (Mr. Evarts), to eliminate therefrom the propositions of law upon which he seemed to desire to rest this cause. It is not needed that I re-announce his argument; it is enough that I restate his positions, in, as near as may be, the terms in which they were originally propounded.

His earliest general assertion of doctrine, on the first day of his argument, was in these words: Doctrines contended for by the claimants.]

"Commerce is not to be trammelled in warlike materials or warlike ships, because there happens to be a war, for war is the only promoter of traffic in warlike materials and warlike ships."

On the second day, the legal thought announced on the first day, was developed in the following form:

"If it does not appear affirmatively, on the part of the government, that the vessel is to sail from this port as an *enlisted* hostile ship of one belligerent, then there is no forfeiture, although it may be made to appear by indisputable proof that she has been built, fitted, *armed*, and equipped as a ship of war, complete and *ready for action*."

Again:

"The diplomatic discussions from the foundation of the government, the orders of the executive, everything shows that all our law undertakes, all that it will permit the supposed duty of neutrality to accomplish, is that there shall not be an *enlisting* in the cause of the

belligerent *within our ports*, to the extent of having the vessel *armed and equipped*, or armed and equipped in a warlike manner with that intent."

Further on in the discussion, the distinguished counsel, rising to the height of his great argument, thus declares the measure of belligerent right, and the rule of neutral duty:

"Now, if your Honor please, to bring this matter down to some distinct tests, suppose that the Meteor, while she lay at the wharf, without any coals or provisions on board of her, had been sold to the Chilian government, deliverable outside of this port, or deliverable in Chile, and that was proved by a written open contract, brought into court, will the prosecuting officer claim that that brings her within the statute against fitting out and arming with intent that she should be used by a belligerent? Where would be the single act attempted or initiated in respect to this vessel with the guilty intent? Manifestly nothing. What reason is there that a vessel, acquired by a belligerent, and thus not guilty up to the time of acquisition, should be prohibited from receiving, not warlike equipments, but receiving coals and provisions suitable? There really would be no violation of our neutrality act, it seems to me, if Chile had acquired by purchase a transfer of the title of this ship, and if, having acquired that title, she openly undertook to put coals and provisions on board, with a commercial crew, and took the vessel out to Chile; no violation of our neutrality act whatever. I hold it to be manifest that a ship, having, if you please, adaptability to be made into a war ship, and adaptability for use in commerce, may be acquired by any foreign government in our ports, by purchase, and if, after the acquisition, the only fitting-out and preparation for sea and egress from port, prepared or attempted, is with a commercial and peaceful crew, with coal for the use of her engines, and provisions for the support of a commercial and peaceful crew, there is not any infraction of our neutrality laws whatever. Nor is there anything technical or formal in this decision. It is essential. If it is competent for a foreign nation to buy a ship, it is competent for a foreign nation to take her out, omitting any warlike change or equipment."

Such are the propositions of law advanced by the claimants, and your Honor must decide whether they are the doctrines of international law, and municipal jurisprudence, which govern in the judicial tribunals of the United States.

The Constitution by bringing the United States into the family of nations, placed them under the laws of nations.

It will not be seriously denied in this court, that we, in the United States, are subordinated to the general law of nations, in so far as that law applies to our intercourse with, and relation to, the rest of the world. The Constitution declares this, by the mere act of bringing us into the circle of independent civilized States. It is the condition of our national existence to be subject to that code. No nation can

be so great as to be exempt from the power, or so little as not to feel the care, of that ample and boundless jurisprudence "whose seat is the bosom of God, and whose voice the harmony of the world." We cannot escape it if we would, for to escape it we must fly from ourselves, and spurn our own national nature.

It is a familiar doctrine of this grand jurisprudence, that a neutral must so retain his attitude of impartiality, in the face of other warring nations, as not to incline to, or aid, either belligerent. Recognized international obligations not only prohibit the enlisting of soldiers, or sailors, in the territory of a neutral, for service in the interest of either belligerent, but they also forbid the beginning, setting on foot, providing, or preparing, in the dominions of a neutral, the means for any naval *enterprise* whatsoever. All this is clear. The fifth and seventh volumes of Wheaton's Supreme Court Reports, are replete with decisions announcing this primary principle of neutrality. The act of 1818, in its sixth section, explicitly declares it. No incipient step in war is allowed, by the law of nations, to begin on neutral ground. (Twee Gebroeders, 3 Robinson's Rep., 162.) No act of hostility can have its commencement there. A neutral cannot permit one belligerent to have a station in, and make a vantage-ground of his country, to procure material with which to injure the other belligerent. Such is public law, as accepted by jurists everywhere.

Now, if the Court please, the neutrality act of 1818 consecrates these tenets and determinations of international jurisprudence. It aims to repress and prevent all naval enterprises, set on foot in the United States as a point of departure. Its fifth section punishes, with fine and imprisonment, any person who, in this country, increases or augments the force of any armed vessel of either belligerent, whether by adding to the number of its equipments, or "by the addition thereto of any equipment solely applicable to war." So that, if a cruiser of Chile, for example, be lying in the port of New

York to-day, it is very clear that our merchants cannot supply her with shot, shells, guns, or ammunition, so long as war exists between that nation and Spain, and the United States are at peace with both. Its sixth section also punishes, by fine and imprisonment, any person who shall provide *the means* for any military enterprise against nations with whom we are at peace. Its tenth section requires that owners of armed ships shall give bonds in double the value of the ship, that she shall not cruise, or commit hostilities, against nations with whom we are at peace. Its eleventh section authorizes collectors to detain vessels, "manifestly built for warlike purposes, and about to depart, of which the cargo shall consist of arms and munitions of war."

What, I pray to know, are those restrictions of positive law, if not trammels upon commerce in "warlike materials or warlike ships?" How can it be said, with such legislation staring us in the face, that war between two States, with whom we are on terms of amity, does not impose on us any limitation of commerce? I ask my learned opponent to tell me by what rule of logic, or legal interpretation, he construes a statute, enacted for the purpose of protecting neutral rights, and enforcing neutral duties, in such a manner as to make the sale of a cannon, a shell, or a cutlass, to a belligerent's vessel of war, an offence to be visited by fine and imprisonment, but the sale to, and fitting out for that same belligerent for his use, of a powerful cruiser like the Meteor, an innocent transaction, not reached or covered by the statute!

The claimants, it is plain to see, have submitted to your Honor, as basis for release of the Meteor, a proposition of law so broad, that it is contradicted by a positive statute, and yet a statement less ample would not cover the nakedness of the Meteor.

Nobody denies that warlike materials, among which coals are now included, and warlike ships, are *contraband* of war. Everybody admits that there is punishment, of one kind or another, which may be inflicted upon a neutral who sells

and transports contraband goods to a belligerent. All agree that one penalty of carrying contraband to a belligerent, is liability to capture of the articles by the other belligerent, and loss, it may be, under certain circumstances, of the vehicle in which conveyed. So much of restraint on commerce of neutral nations, caused by war, is indisputable.

But it is claimed that a neutral may, with impunity, sell on his own soil, to the agents of a belligerent, contraband articles, provided the property actually changes ownership on the neutral ground, and the neutral does not undertake to transport by sea. If the goods, in that condition, are captured, the neutral suffers no loss, because they are the property of the enemy. The belligerent injured by the sale has no remedy, no matter what his rights, against the neutral, and his rights, if he have any, he can only enforce by war. But a war never has been undertaken, and probably never will be, on account of a sale of such small articles made and completed on neutral ground. The name of *passive contraband* has been given to this kind of traffic; but I never heard that any publicist or jurist, of established reputation, claimed that it included a vessel of war, which is very far, when provided with good engines, from being a passive thing. The line of demarkation, so far as principle is concerned, between this *passive contraband*, which is permitted, and traffic in warlike ships, which is prohibited by our neutrality act, may in some instances be minute and not easily seen by the superficial observer, but yet it exists, and is apparent to him who, like your Honor, has a practised perception of legal truth. It is declared by our neutrality act of 1818. It is the distinction between inertness and action; between a mass of mere matter and a moving enterprise. Thus it is that it by no means follows, because a neutral has a right, on his own soil, to sell to a belligerent arms and ammunition, that, therefore, he has an equal right to provide him, under all circumstances, with an armed, or an

unarmed vessel of war. The two cases are not similar, nor founded on equal reason.

It is apparent, on the face, that the mere selling here, in New York, of a dozen of carbines, or a thousand percussion caps to Chile, leaving to the "confidential agent" the risk of transporting them to that country, need not be acts dangerous to our neutrality, for the reason, among others, that the contraband articles may, in the absence of any vessel from here, be but component parts of a naval enterprise, fitted out in the belligerent's own territory. Parrott-guns, carbines, and percussion caps cannot alone make up a naval expedition, for they cannot cruise to commit hostilities; but the latter can and do transport the former, and so, without entering into any foreign port, or any port of the belligerent, constitute a terrible enterprise of destruction, as the Alexandra, Alabama, Georgia, and Florida taught us by the lurid flames of peaceful traders and toiling fishermen, burned into a watery grave. More than that, it is not needed now that a cruiser have guns on board to constitute her a warlike instrument of naval offence. To "run down a ship," to "cut a ship in twain," were the common phrases of the late war. Powerful engines, and stout bows, are dangerous enemies to peaceful merchantmen.

The court must look to the reigning legislation and jurisprudence of to-day, and not to the acts of the Executive prior to the year 1794.

Your Honor must have observed the persistence with which the counsel for the claimants has, from the beginning to the end of his argument, in the great part of the citations which he has submitted to the court, clung to what was said and done in this relation during the early period of our Republic. Far be it from us, here or elsewhere, to undervalue the opinions of those great men of the Revolutionary epoch who, out of decaying nationalities, the keen jealousies of States, and the formidable animosity of the parent country, laid the foundation of this federated fabric of republican government. He must be bold, indeed, who ventures to arraign, or qualify in any sense, the teachings of either of the great triumvirate of statesmen—Washington, Hamilton,

and Jefferson—who not only allured others to national independence, but in their own persons led the way. But it is no impeachment of their profound statesmanship, and far-seeing devotion to all that could concern the name and fame of the young government, to suggest that there were peculiar circumstances at that time, which tended to mould and form the opinions which the Government expressed in respect to neutral duties. The attitude of the administration of Washington was as bold as it was just. It was, however, before action by Congress in 1794, constrained to consult somewhat the temper of the people, and to harmonize conflicting popular emotions.

The citations made on the other side, from "Sparks' Life of Washington," the "Works of Hamilton," "Jefferson's Complete Works," and the "American State Papers," all refer to a series of official acts prior to the neutral legislation of 1794, which was a new and significant point of departure for the United States in respect to neutral duties. The circular of Mr. Alexander Hamilton to collectors of customs was issued in 1793, and contained, no doubt, a correct statement of the utmost limit to which, at that time, President Washington felt bound to go. But since that time much has become changed—changed by legislation and judicial construction; changed by naval architecture; changed in those physical facts by which one vessel secures the subjection and surrender of another vessel at sea.

My learned friend, who has conducted this case with such conspicuous ability on the part of the claimants, does not ordinarily need outside suggestions to aid in the conduct of causes which he happens to represent, in this or any other judicial tribunal, but yet no one can fail to see that a chief part of the propositions of law, and the arguments thereon, which he has addressed to your Honor, are not unlike those which constituted the staple of the enemies of the United States, in discussing the question of belligerent rights, during our recent rebellion. Then and there, as now and here, the

claimants of inculpated vessels, no matter whether the Messrs. Laird, of Liverpool, or the Messrs. Forbes, of Boston, clung with unreasoning pertinacity to precedents drawn from the first ten years of our history. Nothing could shake off their grip. If any official in the United States, before the year 1794, did an act, or said a thing, demanded by the exigencies of that early day, it has been flauntingly quoted as a just exposition of existing opinion in the United States. Subsequent legislation, and the reigning jurisprudence of to-day, all go for nothing with them. In the time of Washington, Jefferson, and Madison, a ship could not well be a vessel of war unless she had guns actually protruding from her port-holes, and ready for instant action. Then steam had not become the great motive power in naval combats; then iron vessels were unknown; then those terrible monsters of the deep, the Monitors, were things never dreamed of. But now, under the influence of science, and the march of invention, captures are made at sea, peaceful merchantmen are terrified into a surrender, quite as much by a powerful crew, a projecting prow, and engines like those constructed for the Meteor, as, in the olden time, they were by the guns which ranged around a fully-equipped man-of-war. In the case of Great Britain herself, in the matter of the iron-clads, to which I alluded in my opening statement, and assumed to be built for the Confederates by the Messrs. Laird, it will not be pretended that, at the time those ships were seized by the English Government, they were armed, fully equipped, and enlisted in the Confederate service. On the contrary, they had not a gun, a shell, or a cannon, on board. It was when the fortunes of the rebellion began to wane, and England began to see her true interest to be in relations of amity with the United States, and Lord Russell was brought to his senses by the dispatch of Mr. Seward to Mr. Adams, under date of July 11, 1863, in which the Secretary of State informs the Queen's Government that if the doctrine of the Alexandra case is to be maintained by Great Britain, the

United States will reflect whether the maintenance of their own existence does not require them to take the remedy in their own hands, and pursue the Anglo-rebel pirates, and capture them, if need be, in the very harbors of Great Britain. It was, I repeat, such acts and such thoughts which, among others, seem to have brought the Queen's minister to reflection, in respect to what, in modern times, constituted warlike fitting, and not only secured revision of the old doctrine in that regard, but eventually led the English Government to put its interdict upon the iron-clads which were being constructed at Birkenhead. All this is apparent from the documents given in the diplomatic correspondence of the Department of State for the year 1864.

Change of opinion in England after Mr. Seward, in July 1863, asserted the American doctrine in respect to neutral duties.

Soon after the reception in England of the dispatch of Mr. Seward to Mr. Adams, of the date of July 11, 1863, to which I have before referred, there can easily be discerned a change in public opinion indicated by the daily press, and by journals especially devoted to legal discussion. With permission of the Court, I desire, in confirmation of what I suggest, to call attention to an article in the *London Law Times* for September 19, 1863, upon this subject. This journal had previously been most decided in vindication of the theory of neutral obligations contended for by the Confederate agents. But at the date to which I refer, there is an article most significant in its tone of thought and expression. I will read but a brief extract therefrom:

> If a nation permit anything to be organized and constructed within its boundaries, which is plainly designed for the use of one belligerent, it is guilty of a very clear breach of neutrality against the other. By a *loose*, and, as we believe, *highly improper* reading of the law, it has been taken for granted that it is not against the principles of international law for a neutral power to permit its subjects to sell munitions of war to a belligerent power. It is held that a contrary principle would interfere too much with the shipbuilders of the Mersey and the Clyde, and the gunmakers of Birmingham, to be tolerated. But it appears to us that there are some things which, in the estimation of rightly-thinking men, may be of even higher importance than the prosperity of the Birkenhead shipowners or the Birmingham gunmakers, and, among them we may be permitted to reckon *a reverence for law* and the preservation of the national honor. It may be that, if we were to put the

spirit of the law into force—that spirit which arms the proclamation of the Queen when she prohibits the sale of all munitions of war—by preventing ships, evidently built for warlike purposes, and cargoes of lethal weapons, except upon proof that they were not to be used in a quarrel as to which we are neutral—it may be that in such a case a few men would have to get rich more slowly; but, at any rate, the nation would be saved from the imputation of the guilt of blood—a guilt which is equally abhorrent whether it sullies the reputation of a man or of a people.

The proposition of law mainly relied upon by the claimants.

The central proposition of law, therefore, upon which the learned counsel for the claimants rests his defence of the Meteor, is the one so much exploited in the case of the *Alexandra*. It was relied upon by the Parliament and public press of England, to uphold the conduct of the Queen's Government, in the matter of the Alabama, and therefore was support sought in the case of the *Santissima Trinidad*. Having been used elsewhere, to justify British subjects in supplying Confederate agents with gunboats, and all the naval thunders which the private shipyards and arsenals of that country could produce, that overworked case is now reproduced for the protection of the Meteor. With how little reason it can be thus used, will now be considered.

Exposition of the case of The Santissima Trinidad.

On the trial of that case, in the court below, it was proved that a vessel built and used as a privateer, in the war of 1812, was, after the peace, sold by her owners, and by the purchasers sent as a commercial adventure, with her armament and a cargo of warlike materials, to Brazil (then at war with Spain), for sale to the Government of Brazil, if it saw fit to purchase her. There was no previous contract or understanding as to who the purchaser was to be, nor any limitation in that respect. The vessel was bought there by private parties, commissioned as a Brazilian war vessel, under the name of Independencia del Sud, and sailed on a cruise along the Spanish coast. She subsequently put into Baltimore, and there added thirty men to her crew, procured another small vessel (Altravida), as a tender, and sailed away again. Having made capture of certain articles, she brought them into Norfolk, Virginia, and placed them in the customs warehouse for safekeeping, where they were libelled by the

Spanish consul in behalf of the owners. The court decreed restitution of the articles to the owners, on the ground that the augmentation of the force of the vessel in Baltimore was "a violation of the law of nations, as well as of our own municipal law," which justified and required a restitution of the articles to the parties injured by such conduct. Such is the *decision* in this case. Its gist and legal point are, that *the prizes* of cruisers illegally equipped in our ports, when brought within our jurisdiction, are liable to seizure and *restitution* to the original owners.

Another point was raised in the case, to the effect that the captures were void, because the capturing vessel was *originally* equipped, armed, and manned as a vessel of war *in our ports*. It was, however, summarily overruled by Mr. Justice Story, who said:

"It is apparent, though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure, contraband indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship of war during the voyage, she would have been justly condemnable as a good prize for being engaged in a traffic prohibited by the law of nations. But there is nothing in our law, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."

We have seen that the facts proved in this case are that the capturing vessel was first sold to private individuals in Brazil, and by them resold to the government, and that she did not leave Baltimore under any contract, express or implied, with the agents of Brazil. When she originally sailed from Baltimore, there was no fixed intention to employ her to cruise, or commit hostilities in the interest of Brazil. Thus it was purely a commercial hazard and adventure. There was no "fitting out," in our jurisdiction, with guilty knowledge or intent. But even to this extent, the quotation from Judge Story is not authority, because it was not necessary to the decision of the case, and is therefore *obiter dicta*.

In fact, the Supreme Court so treated it in the case of

The case of the Gran Para.

the *Gran Para*, where the capturing vessel was built in the port of Baltimore in 1817, and constructed for purposes of war. After being launched, she was, February 16, 1818, purchased by the claimant, then a citizen of the United States. The vessel then cleared for Teneriffe, having in her hold twelve eighteen-pound grenades, with their carriages, a number of small arms, and a quantity of ammunition, entered outward as *cargo*. No guns were mounted. The vessel proceeded directly for Buenos Ayres, and discharged her crew there. Subsequently she obtained a commission from the government of the Oriental Republic to cruise against Spain, and sailed in June, 1818, under the command of the claimant. In September, 1818, she returned to Baltimore with the money in question. Chief-Justice Marshall, in giving the opinion of the Court, rehearsed the before-mentioned facts, declared the only question to be whether the Irresistible was originally fitted out in Baltimore in violation of the neutrality act of 1818, and added:

> "There is nothing resembling a commercial adventure in any part of the transaction. *The vessel was constructed for war*, and not for commerce. There was no cargo on board but what was adapted for purposes of war. * * * * * The third section makes it penal for any person, within any of the waters of the United States, to be 'knowingly concerned in the furnishing, fitting out, or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or State, to cruise,' &c.
>
> "It is too clear for controversy that the Irresistible comes within this section of the law also."

Would the venerable Chief-Justice, who gave the opinion in the *Gran Para*, have hesitated, upon the proofs before your Honor, to condemn a vessel like the Meteor, constructed in all respects for war purposes, and attempting to depart on an understanding with a belligerent government, that she was eventually to cruise or commit hostilities in the service of that belligerent? Could any jugglery, of a pretended commercial transaction, dupe or mislead his instinctive perception of truth, and relentless logic?

The *dictum* of Judge Story in the *Santissima Trinidad*,

if of as much authority as the learned counsel for the claimant contends, should and would have saved the Irresistible. But she was condemned! If it was powerless to protect that vessel, in a court of which Judge Story was a member, it certainly cannot now rescue the Meteor.

The case of Quincy.

But we are not left to rely upon the *Gran Para* alone; for the case of *United States* vs. *Quincy*, decided in 1832, and to which I shall have occasion to refer again in another part of my argument, so limits and modifies the general language used by Mr. Justice Story in the *Santissima Trinidad*, that it fails to be a support for the claimants of the Meteor. That most accurate judge, Mr. Justice Thompson, in Quincy's case, declared that there *was* something "in our law that forbids our citizens from sending armed vessels to foreign ports for sale," provided there existed a guilty knowledge or intention. He said that the material point to be determined in such cases was whether the adventure was commercial or warlike, which, in turn, depended on the intention with which the negotiations, or preparation for the voyage were made. It is the guilty knowledge, or intent that the vessel may be used to augment the aggressive force of one belligerent against another, which taints her, and entails confiscation.

But the facts proved in respect to the Meteor go further than this, for we establish a conspiracy in New York to fit her out for the service of Chile. The territory of the United States has thus been used by these conspirators as a starting-point, or base of operations, for a hostile naval enterprise. We bring the Meteor within the doctrine of neutral duties for which Mr. Adams so resolutely contended with Lord Russell, and which doctrine, public and official opinion in this country everywhere approved.

Your Honor is so familiar with what has transpired abroad in respect to the Anglo-Confederate pirates, that it is not necessary to say here that the Alabama, when she escaped from Liverpool, had no armament on board, and

that, in power of destruction, she was, in no sense, the equal of the Meteor, which was built expressly to cruise after the Alabama, and what Mr. Forbes, in his letter, describes as the other "British pirates." The guns of the Alabama were taken on board from another vessel, at the Azores, in Portuguese waters. She was sold to Confederate agents on a pretended commercial basis. And shall it be that we, in the United States, who sustained Mr. Adams in the matter of the Alabama, are now to put ourselves in the condition of demanding from other nations that which we are unwilling to give in return? Can it be that events have hurried by with such rapidity, during the rebellion, that we have now forgotten to what extent public opinion was here carried against England, for her conduct in the affair of the Alabama?

The record of the Chamber of Commerce of the State of New York, on the requirement of honest neutrality.

The action of commercial associations, no matter how respectable, affords, I am well aware, no rule for the guidance of this court; but yet, it may be useful, in this connection, to point back to the mercantile record of New York. With your Honor's permission, then, I call attention to proceedings which have been had, at various times, in the Chamber of Commerce of the State of New York, in respect to the rights and duties of neutrals. These proceedings will be the more edifying by reason of the fact that some of the more prominent of the members of the Chamber happen now to be pecuniarily interested in the Meteor.

In 1855, on complaint of the British Consul at this port, a bark, loading for China, was detained by orders from Washington for examination. The Chamber, thinking this act an offence against their body, appointed a committee to investigate the circumstances of the case, and make a report thereon. That report contains an exposition of what the Chamber deemed, at that time, to be the duties of neutrality. It says:

"Our laws forbid the being concerned in fitting out any vessel to commit hostilities against any nation at peace with the United States.

These laws are the well-known expressions of public opinion, and the common consent of the country. * * The Chamber of Commerce of New York hold these enactments binding equally in law, honor, and conscience," &c.

The general tone of these views is certainly unexceptionable. The declaration that our laws forbid the being concerned in fitting out *any* vessel to commit hostilities against any nation at peace with the United States, embodies the very doctrine for which I have now the honor to contend. It will be observed that the Chamber is explicit that it is forbidden to fit out "any vessel," no matter whether armed or unarmed, wood or iron, transport or gunboat. All I ask is that this rule be applied to the case of the Meteor.

This report was followed by a series of resolutions, one of which denounces those, who violate the neutrality laws of the United States, "*as disturbers of the peace of the world, to be held in universal abhorrence.*"

Again: a meeting of the Chamber of Commerce was held, October 21, 1862, in respect to the burning of the ship Brilliant, by the Alabama. On that occasion, a speech was made by Mr. A. A. Low, the Vice-President of the Chamber, and one of the owners of the Meteor. He was not sparing in criticism upon English ship-owners, and ship-masters, who sold the Alabama to Confederate agents, nor did he omit to pay his respects to the authorities of the Queen's Government who permitted her to escape. And he concluded by submitting a series of resolutions, three of which I venture to read:

Resolved, That this Chamber has not failed to notice a rapid change in British sentiment, transforming a friendly nation into a self-styled "neutral" power, the nature of whose neutrality is shown in *permitting* ships to go forth with men, and in permitting an armament *to follow them* for the detestable work of plundering and destroying American ships, thus encouraging upon the high seas an offence against neutral rights, on the plea of which, in the case of the Trent, the British government threatened to plunge this country into war.

Resolved, further, That the outrage of consigning to destruction, by fire, without adjudication, British and American property together, is an aggravation of the offence against the rights of neutrals, and ought to be denounced as a *crime* by the civilized nations of the world.

Resolved, That this Chamber heard, with amazement, that other ves-

sels are fitting out in the ports of Great Britain, to continue the work of destruction begun by the Alabama; an enormity that cannot be committed on the high seas without jeopardizing the commerce and *peace of nations.*

It will be noticed by the court that these resolutions condemn the *sale* and exit of an *unarmed* vessel; of a vessel by no means equal, when she left the port of Liverpool, to the destructive power of the Meteor.

Again, on February 21, 1863, the Chamber of Commerce held another meeting on the subject of the "continued piracies of vessels fitted out in Great Britain upon American commerce." At this time Mr. A. A. Low, one of the owners of the Meteor, submitted a report, instead of a speech, in which he contrasted the course of the American Government, in past years, with that of the British Government, in permitting an *unarmed* vessel like the Alabama to escape. This report concluded with the following words:

"Your committee respectfully suggest that this Chamber has a right and has reason to complain and to reiterate its complaint of an interpretation of the neutrality law, which is at variance with both the theory and practice of the American government, as already shown—an explanation which places at the command of the rebels the forges, arsenals, ship yards, seamen and ships; in a word, all the various instrumentalities of the greatest naval power of the world; and the Chamber of Commerce may well join to its complaint the bitter lament that a nation, claiming to be foremost in the advancement of civilization and the special guardian and exponent *of commercial honor*, should take an attitude so repugnant to the spirit of the age!"

Now, if the court please, the precise point of these two meetings of the Chamber of Commerce of New York is, first, arraignment and denunciation of English ship-builders and ship-owners for selling the Alexandra, or the Alabama, to the agents of the rebellion; secondly, vituperation of England for allowing the Confederates to use her "forges and arsenals," not less than ship-yards; and next, a censure of the Queen's Government for permitting those two vessels to go to sea, and for not condemning them, in courts of law, as forfeited to the Government of Great Britain for violation of the Foreign Enlistment Act of that country. The Chamber of Commerce knew, or it ought to have

known, that one great difficulty in the case of the Alexandra was to prove that she was a war vessel, which difficulty is removed in the case at bar, by the letter of Mr. Forbes, one of the owners of the Meteor. The Chamber also knew, or ought to have known, that when the Alexandra, or the Alabama, escaped from English jurisdiction, they were not armed, any more than the Meteor was armed when she attempted to clear from the port of New York, on the day she was arrested by a mandate from this Court. If the speeches and reports of Mr. Low, and the resolutions of the Chamber, were just and deserved—if they were not mere aimless invective—in respect to the English Government and its people, then it is clear that the Chamber ought at once to arraign, in like language, and with like severity, the owners of the Meteor, upon the facts which have been proved in this case. And if the lamented District-Attorney of the United States, Mr. Dickinson, had failed to act with the promptness and vigor which he displayed in respect to the Meteor, when the facts of the case were brought to his attention by the Spanish authorities, he would have been liable to censure as severe as that which the Chamber of Commerce visited upon the law officers of Great Britain.

Opinions of Senator Sumner, Chairman of the Committee of Foreign Affairs in the Senate of the United States, expressed in a public speech.

But this is not all of valuable, popular or official, opinion on this subject. I hold in my hand a speech on foreign affairs, made September 10, 1863, by Mr. Sumner, Senator of the United States from the Commonwealth of Massachusetts, and Chairman of the Committee on Foreign Affairs. I call your Honor's attention to an extract, not only as giving expression to the opinion of a very careful student of international law, the compiler of a most important series of the judicial decisions of Mr. Justice Story, but also as indication of the popular and professional current on this topic in the year 1863.

But even the Royal Proclamation gives no sanction to the preparation in England of a *naval expedition* against the commerce of the United States. It leaves the Parliamentary Statute, as well as the general Law of Nations, in full efficacy to restrain and punish such an offence.

And yet in the face of this obvious prohibition, standing forth in the text of the law, and founded in reason "before human statute purged the common weal," also exemplified by the National Government, which, from the time of Washington, *has always guarded its ports against such outrage*, powerful ships have been launched, equipped, fitted out and manned in England, with arms supplied at sea from another English vessel, and then, assuming that by this insulting *hocus pocus* all English liability was avoided, they have proceeded at once to rob and destroy the commerce of the United States. *England has been their naval base* from which were derived the original forces and supplies which enable them to sail the sea. Several such ships are now depredating on the ocean, like Captain Kidd, under pretended commissions—each in itself a *naval expedition*. As England is not at war with the United States, these ships can be nothing else than pirates; and their conduct is that of pirates. * * * * * * * * * * *

It is bad enough that all this should proceed from England. It is hard to bear. Why is it not stopped at once? One cruiser might perhaps elude a watchful Government. But it is difficult to see how this can occur once—twice—three times; and the cry is still they sail. Two powerful rams are now announced, like stars at a theatre. Will they too be allowed to perform? * * * * * * * *

Municipal Law is violated—while International Law, in its most solemn obligation to do unto others as we would have them do unto us—is treated as if it did not exist. Eminent British functionaries in Court and Parliament, vindicate the *naval expeditions*, which have been unleashed against a friendly Power. Taking advantage of an admitted principle, that "munitions of war" may be supplied, the Lord Chief Baron of the Exchequer tells us, that "ships of war" may be supplied also. Lord Palmerston echoes the Lord Chief Baron. Each vouches American authority. But they are mistaken. The steel which they strive to "impell" cannot be feathered from our sides. Since the earliest stage of its existence the National Government has asserted a distinction between the two cases; and so has the Supreme Court, although there are *words* of Story which have been latterly quoted to the contrary. But the authority of the Supreme Court is positive on both the points into which the British apology is divided. The first of these is that, even if a "ship of war" cannot be furnished, the offence is not complete until the armament is put aboard, so that where the ship, though fitted out and equipped in a British port, awaits her armament at sea, she is not liable to arrest. Such an apology is an insult to the understanding and to common sense—as if it was not obvious that the offence begins with the laying of the keel for the hostile ship, *knowing it to be such;* and in this spirit the Supreme Court has decided that it "was not necessary to find that a ship on leaving port was armed or in a condition to commit hostilities;—for citizens are restrained from such acts as are calculated to involve the country in a war." (U. S. *vs.* Quincy, 6 Peters, 445.) The second apology assumes, that, even if the armament were aboard so that the "ship of war" was complete at all points, still the expedition would be lawful, if the juggle of a sale were adroitly employed. But on this point the Supreme Court, speaking by Chief Justice Marshall, has left no doubt of its deliberate and most authoritative judgment. In the case before the Court, the armament was aboard, but cleared as cargo; the men too were aboard but enlisted for a commercial voyage; the ship, though fitted out to cruise against a nation with which we were at peace, was not commissioned as a privateer, and did not attempt to act as such until she had reached the River La Plata,

where a commission was obtained and the crew re-enlisted; yet, in the face of these extenuating circumstances, it was declared by the whole Court that the neutrality of the United States had been violated, so that the guilty ship could not be afterwards recognized as a legitimate cruiser. All these disguises were to no purpose. The Court penetrated them every one, saying that, if such a ship could lawfully sail there would be on our part "a fraudulent neutrality, disgraceful to our government, of which no nation would be the dupe." (*The Gran Para*, 7 Wheat., 471, and *also four other cases in same volume.*) But a "neutrality" worse even than that condemned in advance by our Supreme Court, "of which no nation would be the dupe," is now served out to us, which nothing but the fatal war spirit that has entered into Great Britain can explain. There was a time when the Foreign Secretary of England, truly eminent as statesman and as orator, Mr. Canning, said in the House of Commons: "If war must come, let it come in the shape of satisfaction to be demanded for injuries, of rights to be asserted, of interests to be protected, of treaties to be fulfilled. *But, in God's name, let it not come on in the paltry, pettifogging way of fitting out ships in our harbors to cruise for gain. At all events let the country disdain to be sneaked into a war.*" (Canning's Speeches, Vol. v. p. 51.) These noble words were uttered in reply to Lord John Russell and his associates in 1823, on their proposition to repeal the Foreign Enlistment Act and to overturn the statute safeguards of British neutrality. But they speak now with greater force than then.

Even if it be admitted that "ships of war," like "munitions of war," may be sold to a belligerent, as is asserted by the British Prime Minister, echoing the Lord Chief Baron, it is obvious that it can be only with the distinction, to which I have already alluded, that the sale is a *commercial transaction*, pure and simple, and not, in any respect, a *hostile expedition* fitted out in England. The ship must be "exported" as an *article of commerce*, and it must continue such *until* its arrival at the belligerent port, where alone can it be fitted out and commissioned as a "ship of war," when its hostile character will commence. Any attempt in England to impart to it a hostile character, or, in one word, to make England its *naval base*, must be criminal; but this is precisely what has been done. And here are the leonine foot-prints which point so badly.

But not content with misconstruing the decisions of our Supreme Court, in order to make them a cover for *naval expeditions* to depredate on our commerce, our whole history is forgotten or misrepresented. It is forgotten, that, as early as 1793, under the administration of Washington, before any Act of Congress on the subject, the National Government recognized its liability, under the Law of Nations, for ships fitted out in its ports to depredate on British Commerce; that Washington, in a Message to Congress, describes such ships as "vessels commissioned or *equipped in a warlike form*, within the limits of the United States," and also as "military expeditions or enterprises" (*American State Papers*, Vol. i. p. 22); and that Jefferson, in vindicating this policy of *repression*, said, in a letter to the French Minister, that "it was our wish to preserve the morals of our citizens from being vitiated by courses of lawless plunder and murder" (*Ibid*, 148); that, on this occasion, the National Government made the distinction between "munitions of war," which a neutral might supply in the way of commerce to a belligerent, and "ships of war," which a neutral was not allowed to supply, or even to augment with arms; that Mr. Hammond, the British plenipotentiary at that time, by his letter of 8th May, 1793, after complaining of two French privateers fitted out at Charleston, to cruise against British com-

merce, expressly declares that he considers them "breaches of that neutrality which the United States profess to observe, and direct contraventions of the Proclamation which the President has issued" (*Wharton's State Trials*, p. 49), and that very soon there were criminal proceedings, at British instigation, on account of these privateers, in which it was affirmed by the Court, that such ships could not be fitted out in a neutral port without a violation of international obligations; that, promptly thereafterwards, on the application of the British Government, a statute was enacted, in harmony with the Law of Nations, for the better maintenance of our neutrality; that, in 1818, Congress enacted another statute in the nature of a Foreign Enlistment Act, which was proposed as an example by Lord Castlereagh, when urging a similar statute upon Parliament; that in 1823 the conduct of the United States on this whole head was proposed as an example to the British Parliament by Mr. Canning; that, in 1837, during the rebellion in Canada, on the application of the British Government, and to its special satisfaction, as was announced in Parliament by Lord Palmerston, who was at the time Foreign Secretary, our Government promptly declared its purpose "to maintain the supremacy of those laws which had been passed to fulfil the obligations of the United States towards all nations which should be engaged in foreign or domestic warfare;" and, not satisfied with its existing powers, undertook to ask additional legislation from Congress; that Congress proceeded at once to the enactment of another statute, calculated to meet the immediate exigency, wherein it was provided that collectors, marshals and other officers shall "seize and detain *any vessel* which may be provided or prepared for *any military expedition* or enterprise against the territories or dominions of any Foreign Prince or Power." (Statutes at Large, Vol. v. p. 212.) It is something to forget these things; but it is convenient to forget still further that, on the breaking out of the Crimean War, in 1854, the British Government, jointly with France, made another appeal to the United States, that our citizens "should rigorously abstain from taking part in armaments of Russian privateers, or in any other measure opposed to the duties of a strict neutrality," and this appeal, which was declared by the British Government to be "in the spirit of just reciprocity," was answered on our part by a sincere and determined vigilance, so that not a single British or French ship suffered from any cruiser fitted out in our ports. * * * * * *

This flagrant oblivion of history and of duty, which seems to be the adopted policy of the British Government, has been characteristically followed by a flat refusal to pay for the damages to our commerce caused by the hostile expeditions. The United States, under Washington, on the application of the British Government, made compensation for damages to British commerce under circumstances much less vexatious, and, still further, by special treaty, made compensation for damages "by vessels originally armed" in our ports, which is the present case. *Of course, it can make no difference—not a pin's difference—if the armament is carried out to sea, in another vessel from a British port, and there transshipped.* Such an evasion may be effectual against a Parliamentary statute, but it will be impotent against a demand upon the British Government, according to the principles of International Law; for this law looks always at the *substance* and not the *form*, and will not be diverted by the trick of a pettifogger. Whether the armament be put on board in port or at sea, England is always the *naval base*, or, according to the language of Sir William Scott, in a memorable case, the "station" or "vantage ground,"—which he declared a neutral

country could not be. (*Twee Gebroeders*, 3 Robinson, R. 162.) Therefore, the early precedent between the United States and England is in every respect completely applicable, and since this precedent was established — *not only by the consent of England but at her motion* — it must be accepted on the present occasion as an irreversible declaration of international duty. Other nations might differ, but England is bound. And now it is her original interpretation, first made to take compensation from us, which is flatly rejected, when we ask compensation from her. But even if the responsibility for a *hostile expedition* fitted out in British ports were not plain, there is something in the recent conduct of the British Government calculated to remove all doubt. Pirate ships are reported on the stocks ready to be launched, and when the Parliamentary statute is declared insufficient to stop them, the British Government declines to amend it, and so doing, it openly declines to stop the pirate ships, saying, "If the Parliamentary statute is inadequate then let them sail." It is not needful to consider the apology. The act of declension is positive, and its consequences are no less positive, *fixing beyond question the responsibility of the British Government for these criminal expeditions.* In thus fixing this responsibility, we but follow the suggestions of reason, and the text of an approved authority, whose words have been adopted in England.

"*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 also able and obliged to hinder it, does not hinder it, *renders himself criminal, because he has consented to the bad action, the commission of which he has permitted.* It is presumed that a Sovereign knows what his subjects openly and frequently commit, and, *as to his power of hindering the evil, this likewise is always presumed*, unless the want of it be clearly proved."

Such are the words of Burlamaqui, in his work on Natural Law, quoted with approbation by Phillimore in his work on the Law of Nations.—(*Phillimore*, Vol. i. p. 237.) Unless these words are discarded as "a maxim,"—while the early precedent of British demand upon us for compensation is also rudely rejected—it is difficult to see how the British Government can avoid the consequences of complicity with the pirate ships in all their lawless devastation.

Here, in the potent language of a Senator of Massachusetts, and the Chairman of the Committee on Foreign Affairs in the Federal Senate, is felicitously summed up the whole matter. New York is the *naval base* of the fitting out of the Meteor. There is no authority, says Mr. Sumner, for the dogma that, because it is permitted to furnish *munitions* of war, it is allowable to supply *ships* of war. The National Government and the Supreme Court, have both asserted, and maintained the distinction. The Supreme Court is equally positive against the theory that the offence is not complete till the armament is put on board. The idea that the juggle of a pretended *sale* can protect, or redeem, the criminality of

the Meteor, is pronounced a *hocus pocus*, insulting to common sense. Mr. Sumner agrees with Dr. Phillimore in the opinion that the *dictum* of Mr. Justice Story, in the case of The *Santissima Trinidad*, is error. The liability of the United States for injuries inflicted on Spain, by a vessel circumstanced like the Meteor, is declared to be undeniable by the rules of international law. I leave the Messrs. Forbes, of Boston, to the companionship of the opinions of their trusted Senator!

Rules of neutral duty laid down by President Pierce in his annual message for 1855.

And here I may appropriately allude to the impression which the counsel endeavored to make on the court by a citation from the annual message of President Pierce for 1855. The extract read to the bench arrested my attention, because it seemed to run counter to everything which that administration had elsewhere done or said in respect to neutral duties. It happened to me to have been somewhat intimately associated, in a very humble way, with that administration, and to have been cognizant of the deliberations therein which were had on this very topic. The court will remember that it was the period of differences with England, growing out of violations of our sovereignty by the British minister, Mr. Crampton, and certain consuls. Mr. Marcy was in the State Department, and his great brain and nature were never more resolutely employed than in penetrating to the bottom of this subject. He was powerfully reinforced by the learning, and legal acumen of the Attorney-General, Mr. Caleb Cushing, and the sound sense and unerring judgment of Mr. Guthrie, now a Senator of the United States; and it was by the help of such wise counsellors, to aid in ascertainment of American law, that President Pierce matured the views which he expressed to Congress in his annual message of 1855. Do those views sustain the dogmas of the claimants of the Meteor? Far from it—so far from it that they uphold and establish doctrines just the opposite. My learned opponent quoted but one short paragraph from the Message, and I compassionate him that he had not time

to look further. Permit me to read all that portion which has a bearing on the subject under discussion :

" One other subject of discussion, between the United States and Great Britain, has grown out of the attempt, which the exigencies of the war in which she is engaged with Russia induced her to make, to draw recruits from the United States.

" It is the traditional and settled policy of the United States to maintain impartial neutrality during the wars, which, from time to time, occur among the great powers of the world. Performing all the duties of neutrality towards the respective belligerent States, we may reasonably expect them not to interfere with our lawful enjoyment of its benefits. Notwithstanding the existence of such hostilities, our citizens retain the individual right to continue all their accustomed pursuits, by land or by sea, at home or abroad, subject only to such restrictions in this relation, as the laws of war, the usage of nations, or special treaties, may impose ; and it is our sovereign right that our territory and jurisdiction shall not be invaded by either of the belligerent parties, for the transmit of their armies, the operations of their fleets, the levy of troops for their service, *the fitting out of cruisers by or against either*, or any other act or incident of war. And these undeniable rights of neutrality, individual and national, the United States will *under no circumstances surrender*.

" In pursuance of this policy, the laws of the United States do not forbid their citizens to sell to either of the belligerent powers, articles contraband of war, or to take munitions of war, or soldiers, on board their private ships for transportation ; and although, in so doing, the individual citizen exposes his property, or person, to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the Government. Thus, during the progress of the present war in Europe, our citizens have, without national responsibility therefor, sold gunpowder and arms to all buyers, regardless of the destination of those articles. Our merchantmen have been, and still continue to be, largely employed by Great Britain, and by France, in transporting troops, provisions, and munitions of war to the principal seat of military operations, and in bringing home their sick and wounded soldiers ; but such use of our mercantile marine is not interdicted either by the international, or by our municipal law, and therefore does not compromit our neutral relations with Russia.

" But our municipal law, in accordance with the laws of nations, peremptorily forbids, *not only foreigners*, but our own citizens, *to fit out*, within the limits of the United States, *a vessel* to commit hostilities against any State with which the United States are at peace, or to increase the force of any foreign armed vessel intended for such hostilities against a friendly State.

" Whatever concern may have been felt by either of the belligerent Powers lest private-armed cruisers, *or other vessels, in the service of one, might be fitted out in the ports of this country to depredate on the property of the other, all such fears have proved to be utterly groundless. Our citizens have been withheld from any such act or purpose by good faith, and by respect for the law.*"

So with citations made from Opinions of the Attorneys-General. He referred to but one, and that the brief reply

of Mr. Rush in 1816. If the counsel had pressed on, and looked into the third volume (pp. 739–741), and the fifth volume (p. 92), he would have found most instructive matter, adverse to all the legal doctrines for which he contends to be sure, but yet valuable matter. The opinion of Mr. Reverdy Johnson, in the fifth volume, will come under consideration hereafter, but from that of Mr. Legare, in the third volume, I will read now a brief extract. That accomplished jurist says:

"The reasoning on this subject is shortly this: The policy of this country is, and ever has been, perfect neutrality, and non-interference in the quarrels of others; but, by the law of nations that neutrality may, in the matter of furnishing military supplies, be preserved by two opposite systems, viz.:—either by furnishing *both* parties with perfect impartiality, or by furnishing *neither*. For the former branch of the alternative, it is superfluous to cite the language of publicists, which is express, and is doubtless familiar to you. If you sell a ship-of-war to one belligerent, the other has no right to complain, so long as you offer him the same facility. The law of nations allows him, it is true, to confiscate the vessel as contraband of war if he take her on the high seas; but he has no ground of quarrel with you for furnishing, or attempting to furnish it. *But, with a full knowledge of this undoubted right of neutrals, this country has seen fit, with regard to ships-of-war, to adopt the other branch of the alternative—less profitable with a view to commerce, but more favorable to the preservation of a state of really pacific feeling within her borders—she has forbidden all furnishing of them under severe penalties.* The memorable act of 1794 consecrated this policy at an early period of our federal history; and that act was only repealed in 1818 to give place to an equally decided expression of the legislative will to the same effect. Whatever may be thought of the spirit and policy of the law, its scope and objects are too clear to be misunderstood."

The quality and degree of the intent which inculpates a vessel.

In the very searching argument of the counsel on the other side, he had much to say in respect to the quality, and degree of intent, which the Court must find before it can decree the forfeiture of this vessel. Much of what I desire to submit on this head, I shall postpone to a point further on in my argument, but here let me deny utterly that the illegal intent must needs be proximate, in the sense contended for by him. The rule, settled in Federal executive administration at Washington, is quite different. There has been before the Department of State a case raising the very question. It is reported in full, in executive documents of the

first session of the Thirty-first Congress, Vol. iii. part 1. The main facts are these:

In the year 1848, Germany, partaking of the political commotion which at that time spread so generally over the Continent, made effort for the establishment of a great empire under one federal head, and, as the first step, a call was made on Archduke John of Austria to act as vicar, and the city of Frankfort was selected as the temporary seat of the German central power, where a parliament assembled, composed, it was assumed, of the representatives of the people of Germany. The new government desired to create a navy, and a commission was sent to the United States for the purpose of purchasing one or more war steamers. The assistance of the Navy Department, in the selection of vessels, was afforded to the representatives of the new German government. A steamer, called the United States, was purchased by the German agents, and steps were at once taken to convert her into a vessel of war. Facilities were afforded at the Brooklyn Navy Yard, by direction of the Secretary of the Navy, for making the required alterations, and the work was actually entered upon; but on April 2, 1849, soon after the accession of President Taylor, a letter was addressed by the representative of Denmark in this country, to the Secretary of State (Mr. Clayton), calling his attention to the fact that the steamer, United States, was undergoing alteration for the purpose of converting her into a war steamer, and that war existed between the Central Government of Germany, and Denmark. The Danish Legation also informed the Secretary of State that the steamer United States was, by express stipulation, to retain her American character until delivered in a German port, so as to have the protection of the American flag in crossing the ocean. Within a few days after the reception of this communication, the Secretary of State, under date of April 10, 1849, passed a note to the Minister, in this country, of the German Empire, informing him of the formal protest of Denmark against the fitting out of the

steamer United States, and saying in substance that the steamer would not be permitted to leave the country, unless the Minister of the Germanic Empire would give his "solemn assurance" to the President, that the vessel in question "is not destined and intended to be and will not be, employed by the German Government against any power with which the United States are now at peace." The German Minister replied to the note of the Secretary of State, under date of April 14, 1849, and said that the real object in purchasing the vessel was to take her to Bremerhaven, there to receive the further orders of the German Government; that in fitting her out, it was intended to use her for war purposes at some future time, but that such *ulterior* intent is not made criminal by the act of April 20, 1818. The German Minister informed the Department of State, that he had obtained the professional opinion of a distinguished member of the New York bar, to the effect that the intent of the neutrality act is the proximate, and not ulterior intent; that the only intent punishable by the act, was an intent to cruise and commit hostilities *immediately upon leaving the port of New York.* Upon receipt of this communication, the whole subject was referred to the Attorney-General, Mr. Reverdy Johnson, for an official opinion, which was given on the 28th instant, and from which (Opinions of Attorney-Generals, Vol. v. p. 92) I ask permission to read to the court the following extract:

> It was by no means the object of the act of 1818 to distinguish between a proximate or immediate intent, and any other intent, in the use of the word "intent" in its third section. Any intent, direct or contingent, to cruise or commit hostilities against a nation with which the nation fitting her out is then at war is within the act. The design was to prevent the United States from aiding either belligerent; to observe an absolute neutrality; and to do this by prohibiting the fitting out of vessels for the service of either in our ports.
>
> To construe the law as Baron Boenne suggests, would be to render it almost wholly nugatory. This is evident from a consideration of the instance before us. The proximate intent, it is contended, is not to cruise or to commit hostilities against Denmark. But the vessel is to repair to Bremerhaven, there to await orders; and what those orders are to be, it is impossible to anticipate. They must, of necessity, depend upon contingencies which shall then exist, and which cannot now be foreseen.

The design, therefore, to cruise, &c., is not disavowed. The warlike purpose of the vessel is not disclaimed; but, because there is no actual present intent to cruise, &c., and because she may reach the place of her first destination without meeting an enemy, and peace may be restored before she receives orders to cruise, the intent of her equipment is innocent. Such is not the meaning of the law.

In this opinion I am perfectly clear; and I find myself supported by several opinions in analogous cases heretofore given by this office, and upon more than one occasion sanctioned by the Supreme Court.

This opinion of Mr. Johnson was transmitted to the German Minister, who, in turn, submitted to the State Department, criticisms upon the legal conclusions of the Attorney-General, and insisted that the law punished a *proximate*, and not an *ulterior* intent. On the 5th of May, 1849, Secretary Clayton replied to the legal propositions of the German Minister, and informed him that if there was *any* intent, before leaving the United States, that the employment of the vessel should be warlike, then the adventure was not commercial, and was within the denunciation of the neutrality act of 1818. He added that it made no difference whether the intent be proximate or remote. It was enough that there was intent that the vessel might be used offensively by one belligerent against another. The German Minister, on receipt of this last communication from the State Department, indulged in some suggestion of a purpose to bring the matter before the judicial tribunals of the United States, but, in the end, yielded to the imperative requirement of the State Department, that the vessel should not leave until a bond was given, under the eleventh section of the act of April 20th, 1818. The condition of this bond was, that the ship should *never* be used against any country or people at peace with the United States.

The third section of the Act of 1818, provides for more than one principal offence, and each of these offences is a primary and not a secondary offence.

But, says my learned opponent, there is but one *principal* offence in the statute of 1818, which is, "fitting out *and* arming;" and all the other offences or unlawful acts described in the statute, are merely *secondary* acts, contributory to the perpetration, or completion, of the principal and only substantial offence of fitting out and arming; and, therefore, since the Meteor was not armed, and there is no evidence

that she ever was to be armed, in New York, her condemnation cannot be decreed. To reach this construction, he is compelled to employ a spirit of narrow criticism on a great remedial statute, designed to supplement the law of nations, and to effectually maintain the power and neutrality of the country—a criticism which opens a wide door to the perpetration of the very acts which the law of nations itself denounces, and which the statute was manifestly framed to prevent.

Whatever may have been the nature or the causes of the fog, in which the learned Barons of the Court of Exchequer involved themselves in the case of the Alexandra, there can be no excuse, for an American tribunal, to be derived from any of the reasoning in that case, if it shall appear that our statute was framed with the intent to reach other *principal* offences, besides that of fitting out *and* arming, and that this idea of subordinate or subsidiary offences, contributory to the one principal offence of fitting out *and* arming, never entered into the legislative intention of our statute in framing its subsequent clauses.

In order that we may consider the objection of the claimants the more intelligently, let us recur to the words of the section we are to interpret. It reads thus:

SEC. 3. *And be it further enacted*, That if any person shall within the limits of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out, or arming, of any ship or vessel with intent that such ship or vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years; and every such ship or vessel, with her tackle, apparel and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States.

The first proposition of law on which the learned counsel

rests, is this: That there is but one principal offence in this statute, the *corpus delicti* of which is "fitting out *and arming*" of a vessel, with intent that it shall be employed in the service of a foreign State to cruise against another foreign State; that this offence may be committed in three forms, viz., doing the thing itself, attempting to do it, or procuring it to be done, and that all the other acts, subsequently denounced in the third section, are not principal and substantive offences, but merely acts contributory, in different ways, to the perpetration of the principal offence, in one or another of the three ways in which that principal offence may be committed. If this is a sound construction, our Neutrality Act is a very ineffectual statute. If it is not a sound construction, the Act is complete for the prevention of the mischiefs which it was designed to reach.

In order to judge of the soundness of this construction, it is necessary, first, to see what was the history and purpose of this legislation, when it was first introduced into our statute.

The origin of this law, as I have already explained, goes back to the year 1794, a period when the Administration at Washington was doing all that legislative and executive wisdom could then devise, to preserve this country in an attitude of neutrality, in respect to the European wars that followed the French Revolution. It is not to be lightly assumed, that an object of such vast importance, would have been deemed by that Congress to have been effectually accomplished by a law, that should describe and check but *one* of the offences by which the mischiefs, intended to be prevented, can be easily brought about. Before such a supposition can be adopted, we must look to see what were regarded as offences against the rights and sovereignty of neutrals by the law of nations; what were the means, anterior to special provisions of municipal law, which the law of nations afforded for the prevention of those offences, and for the remedy of the wrongs to which they might lead.

It is necessary to look to these things, because the statute is a provision of municipal law, manifestly designed to supply remedies, and means of prevention, which the law of nations does not afford *proprio vigore*.

We have already seen that it is an undoubted principle of the law of nations, that any augmentation by a belligerent of his military force, within the territory of a neutral, is an offence against the dignity and sovereignty of the neutral, which he may resent and prevent if he sees fit. This is especially true of all augmentation of *naval* force, which can be obtained in a great variety of forms, from the simple hiring, or purchase of unarmed vessels, to the procurement of perfectly equipped and armed cruisers. But the means of prevention which, in the absence of statutory law, the law of nations places in the hands of the neutral, by the mere force of its general principles, are few and ineffectual. If a belligerent augments his military force by procuring, or fitting out, a vessel in the territory of a neutral, the courts of the neutral may declare void all captures made by such cruiser, which are brought within their reach, as was done in the *Santissima Trinidad* and *Gran Para*, and may actively interfere to restore the prize to their true owners. But, in the absence of special declarations of the sovereign will of the neutral nation, this is about all that can be accomplished.

Nothing can be effectually done, in the way of prevention, without some provision of municipal law; and, therefore, when we find such provision carefully made, with a legislative definition of offences, and a manifest intent to prevent the mischiefs, which the law of nations empowers the neutral to prevent, if he sees fit, the presumption is that the prevention was intended to be effectual, unless the contrary clearly appears.

Now, nothing can be imagined or suggested, nothing has been, which has any tendency to show that Congress designed, by the enactment of this law of 1818, to leave easy opportunities for effecting the mischiefs which were to be

prevented. On the contrary, the whole scope and spirit of the law disclose a manifest intent to provide an effectual, and complete prevention of those mischiefs.

If, then, it was designed to prevent the departure from our ports of an *armed* vessel, why should it not equally have been designed to prevent the departure of a vessel fitted in every way *to be armed*, and capable of becoming at once a formidable cruiser, as soon as a few guns could be put on board? If the offence of fitting out *and arming* a vessel was to be declared a substantive and principal offence, why should not the "furnishing," or "fitting out," of a vessel, with intent that she *may* be employed against a friendly power, be equally made a substantive and principal offence? The one is equally as important to be prevented as the other. The same violation of the rights, dignity, and sovereignty of the neutral nation, occurs in the one case, as in the other. The mischiefs that may flow from one, are the same, in kind and degree, as in the other; for a cruiser, though unarmed when it leaves the neutral port, may be armed, as was the Alabama, when out of the territorial limits, without entering another port; and even when unarmed, it might make captures from the mere terror of superior numbers of its crew, or by a mere display of its flag, or by stratagem.

This statute is therefore to be construed by keeping in view the mischiefs which were intended to be prevented; and if the language shows that it describes several offences, any one of which, if unchecked, would produce the mischiefs, against which it was the purpose of Congress to guard, then each is a several, substantive, and principal offence, and neither of them is to be regarded as an offence subsidiary, or contributory to the commission of any other.

Now, it cannot be denied that this section embraces the following offences:

1. Fitting out *and arming* a vessel, or attempting to do it, or procuring it to be done, with intent that it *shall be* employed in the service of a foreign state, to *cruise* or *commit*

hostilities against any people or the property of any people with whom the United States are at peace.

2. Being knowingly concerned in "furnishing" any vessel, with the like intent.

3. Being knowingly concerned in "fitting out" any vessel, with the like intent.

4. Being knowingly concerned in "arming" any vessel, with the like intent.

5. Issuing or delivering a commission within the territory, or jurisdiction of the United States, *for* any vessel, to the intent that *she shall be* employed as aforesaid.

Here, beyond all possibility of doubt, are five offences described in careful terms. But the argument is, that three of them, the second, third, and fourth, are merely contributory to the commission of the first. What does the learned counsel say of the fifth—the issuing of a commission *for* any vessel, with the intent that she may be so employed? Does he include it, or exclude it, by his contributory argument? Is it a principal and substantive, or only a subordinate offence, auxiliary of the first? He has not said.

It is easy to see that the fallacy of the argument consists, first, in assuming that the first offence was not sufficiently provided against, in the first clause of the section, and that it was necessary to go on and provide against minor and contributory offences; and secondly, in the further assumption that the language employed to describe those minor and subsidiary offences, is, in effect, the same as the language employed to describe what is claimed as the sole, principal offence. Neither of these is true, if we suppose the intention of the law-makers to have been to make an effectual law. The first offence, fitting out *and* arming, or preparing an *armed* ship, is fully described and covered by the first clause of the section. It may be committed by doing the thing, or by attempting to do it, or by procuring it to be done. The acts of persons who might participate, not as principals or owners, but as contributory employers, could

be punished under this part of the statute, because, whatever might be the contributory part of their service, if they were affected with the intent required by the statute, they would be guilty with others of fitting out an *armed* ship, or of attempting to do it, or of procuring it to be done. There was, therefore, no necessity for providing against subordinate services, in preparing the kind of ship described in this clause, namely, an *armed* ship. This was already done, by a comprehensive provision, which embraces every act, or attempt at an act, which enters into the preparation of an *armed* ship, with the intent she *shall be*—*i. e.*, with the *knowledge* that she *is to be*—employed in the prohibited service of a foreign state.

But where the statute has made this provision for the case of an *armed* ship, it has by no means exhausted the mischiefs which may be done by improper augmentations of belligerent force within the territory of a neutral; and accordingly, it goes on to create other offences, which are just as much principal offences, in respect of the mischiefs which they create, as the offence of preparing an *armed* ship; and these offences are several, and are described in such a way as to leave no doubt that they are each distinct and principal offences. One of them is, being knowingly concerned in "furnishing" *any* vessel; not any *armed* vessel, but *any* vessel; with the intent that she *shall be* employed against a friendly power, as a cruiser, or in the commission of hostilities.

This provision is to be read, just as if it stood by itself, in a separate section, or statute; because there can be no doubt that one of the things, against which Congress intended to guard, was the procurement, in our territory, of any vessels, armed or unarmed, at the time of procurement, with the intent that they might be used, in the service of a foreign power, to cruise against a people, or commit hostilities against a people, with whom we are at peace. In this offence, the only limitation on the character and uses of the

vessel, is that she is to be used as a cruiser, or to commit hostilities; and therefore the suggestion of the learned counsel for the claimant, that belligerents have been suffered to hire transports in neutral ports, and perhaps in our own, has no tendency to show that the offence of "furnishing" a vessel is not a principal offence under our statute, if the vessel furnished is designed as a cruiser, or to commit hostilities. Hiring transports to carry land forces or military supplies, is not an augmentation of the active and aggressive naval force of a belligerent, but obtaining a vessel as a cruiser, or to commit hostilities, clearly is a direct and palpable augmentation of the aggressive means of naval warfare, and it is certainly prohibited by this statute. For the phrase "furnishing any vessel" was clearly not used to describe the putting on board furniture, or supplies, or rigging; all that is described in the other offence of "fitting out any vessel." But the term "furnishing" relates to the vessel itself, and means affording or supplying any vessel. It is the appropriate term to comprehend the acts of selling or buying, hiring, making or receiving a gift or loan of any vessel, or doing any other act by which she is to be put into the control or destined to the use of the foreign belligerent, as a cruiser, or to commit hostilities.

The next offence described in the statute is, being knowingly concerned in "fitting out any vessel," with the intent that she may be so employed. The same reasoning is applicable to this offence, and conducts to the same conclusion that it is a substantive and principal offence. If it were not made such, then one set of men could fit out the vessel with every capacity for becoming a naval cruiser, as soon as she should receive her armament, and do it with perfect intent that she was to be a naval cruiser for a foreign belligerent, and another set of men could put her armament on board, either within or without our territory, with the same intent, and yet, unless the two parties could be connected in a concerted conspiracy, acting in concert, to perpetrate the offence

of fitting out an *armed* ship, neither of them could be punished, and the vessel could not be stopped. To prevent this consequence, Congress has made it an offence to be knowingly concerned in fitting out, not any *armed* vessel, but *any* vessel, with the intent that she may be employed by a foreign belligerent as a cruiser, or to commit hostilities; and nothing can be plainer than the proposition that acts may be done in the fitting out of a ship with that intent, which do not embrace putting guns on board, but which prepare and fit her to receive and use her guns as soon as she gets them.

The next offence is, being knowingly concerned in "arming" any vessel, with the prohibited intent. And the reason for making this a distinct and principal offence is, that if it were not so made, and if the offence of fitting out were not so made, then A, in the port of New York, could sell guns to be carried out of the port and put on board the vessel, with a perfect knowledge that the vessel was to be a cruiser for a foreign belligerent, and B could fit out the vessel in all other respects, with the same knowledge, and yet, if they did not act together, and the vessel were not armed when she sailed, no offence would be committed by either of them. Congress cannot be supposed to have overlooked this manifest result. It is, therefore, made an offence to be knowingly concerned in "arming" any vessel; and it is so made with a clear prescience of the fact that a man may stand on our soil, and be knowingly concerned in arming a vessel which lies more than three leagues from the coast, and which there receives the arms that he sells to others to send to her; or that he may supply her arms, without having any knowledge of those who fitted her out in any other respect, or without any direct coöperation with them.

The next offence is issuing or delivering any commission, within our territory or jurisdiction, for any vessel, to the intent, &c. If this is a merely auxiliary offence, contributory to the principal offence of fitting out an *armed* ship, then

the commission may be issued *here*, openly and publicly, to a ship which has been fully prepared to be a cruiser, and wants nothing but her guns; she can sail down the Narrows, past every fortress of this neutral republic, openly take her guns at sea, and cruise without molestation against a nation with which we are at peace. The consequence of such a construction of the statute would be that our ports would swarm with the agents of foreign belligerents, openly and publicly issuing commissions to vessels so prepared.

It is respectfully submitted to the Court that the common sense and uprightness of the nation will not sanction a construction which makes but one substantive and principal offence in this statute, reduces all other offences described in it to the position of auxiliary and contributory offences to the main offence, and thus opens the door to the greatest abuses. Whatever revelations may have taken place in England of defects in their neutrality law, exhibiting the necessity for further legislation, we have no occasion and no excuse for casting a similar reproach upon our Congress of 1794, or that of 1818. If the British record has not been entirely clean in this respect, ours has been, at least so far as the legislative intention is involved, free from the shadow of a stain. We meant to make, and did make, an efficient law; one that has met and obviated every device by which the mischiefs of a violated neutrality can be perpetrated, by breaking up these devices into distinct and separate offences, and prohibiting each and all of them. Congress has done its full duty. It is for the judicial and executive departments of our Government to do theirs, and no doubt can be entertained that they will do it.

This construction for which I contend is not only manifest on the face of the statute, but it is the settled judicial construction of the statute given to it by the Supreme Court of the United States in the case of the *United States* vs. *Quincy*, already referred to. This was a criminal indictment, and the defendant had, therefore, all the right to ask

for a strict construction of the statute that a supposed offender can ever have. He took the same ground that is now taken by the learned counsel for the claimants. He was indicted for being knowingly concerned in fitting out the Bolivar, with the intent, &c.; and he contended that, inasmuch as the vessel, when she left Baltimore, was not armed, or prepared for war, or in a condition to commit hostilities, he ought to have been acquitted. He prayed in the court below an instruction to the jury to this effect. The court were divided in opinion upon it, and certified the question to the Supreme Court. The Supreme Court expressly overruled the prayer, and held that the offence of being knowingly concerned in fitting out, with the intent, &c., could be committed, although the vessel was not armed, or in a condition to commit hostilities, when she left the United States. They held, too, that if the intent was once formed within the United States, it was not necessary, in order to constitute the offence of being knowingly concerned in fitting out, with that intent, that the design or intention should be afterward carried into execution. This case, therefore, disposes of the doctrine that the offence of being knowingly concerned in fitting out, is a subsidiary and contributory act, to the larger offence of fitting out *and arming*, or that it is necessary to charge and prove that the vessel was fitted out *and* armed within our jurisdiction, before the punishment of forfeiture can be inflicted for the separate offence of furnishing the vessel, or being concerned in fitting her out, or being concerned in arming her, or issuing a commission for her. Every one of these offences may be committed before the vessel is completely equipped as an armed cruiser, or in a condition to commit hostilities; and if any one of them has been committed by anybody within our jurisdiction, in respect to this vessel, the court must pronounce the forfeiture.

There is no necessity for a personal conviction for the offence, in a

This brings us to another position of the counsel for the claimants, which is, that before this court can pronounce a forfeiture under the present libel, it is necessary for the Gov-

court of law, to work forfeiture of the vessel.

ernment to prove that one of these offences has been committed by a designated person, either by producing a record of the conviction of that person in a common law court, or by proving him under this libel to have been the offender; and that, unless personal guilt is fastened upon some named person, or some persons named and designated as the offenders, there can be no forfeiture of the vessel.

This position, I respectfully submit, is founded in a misapprehension, or oversight of a great distinction between forfeitures that are worked in the admiralty jurisdiction and under admiralty seizures, and forfeitures that result from conviction and judgment in a court of common law. And, right here, let me remark that this failure of my learned friend, to realize that this is an admiralty proceeding *in rem*, permeates and vitiates his whole argument. He affects to consider this a criminal trial. He constantly talks of a criminal forfeiture, as different from any other statute forfeiture, in respect to the rules and evidence to be applied. He implores the Court to reflect that Mr. Forbes, or Mr. Somebody else, is on trial, in assumed forgetfulness that the steamship Meteor, and nothing else, is inculpated before your Honor.

But, returning to the objection, let us consider it:

First, in relation to the supposed necessity for producing in evidence here, a personal conviction for the offence in a court of law, before a forfeiture of the vessel can be decreed:

At the common law, certain capital felonies were followed by a forfeiture of the lands or goods of the felon. Until conviction and judgment, however, the forfeiture was not complete, because it was not worked by a proceeding *in rem*, but by the legal effect of the personal conviction, which divested the title of the convict, and vested it in the Crown. Hence the title of the Crown was inchoate, until a record of the personal conviction of the offender could be produced. But it has always been otherwise in reference to proceedings

in rem, for violations of the revenue laws, and offences against the law of nations. In these cases, the *thing* itself is regarded as the primary offender; and, although it must have been placed in that predicament by some human agency, and although the person who does the prohibited act may also be punishable, the two proceedings are entirely distinct from each other, and no conviction of the personal offender is necessary to work a forfeiture of the offending thing. This distinction has been fully and emphatically recognized by the Supreme Court of the United States, which has, more than once, overruled the very objection that is now taken by my learned opponent. Thus in the *Palmyra* (12 Wheaton, 1), there was a proceeding *in rem* to forfeit the vessel for the offence of piratical aggression, under the acts of March 3, 1819, and May 15, 1820. The objection was taken that the forfeiture must be preceded by a conviction for the personal crime; but the Supreme Court held that it was not necessary to allege or prove any conviction of a person for the criminal offence. The opinion of the Court was delivered by Mr. Justice Story, and the following is the answer made by him to the objection:

"The other point of objection is of a far more important and difficult nature. It is well known, that at the common law, in many cases of felonies, the party forfeited his goods and chattels to the crown. The forfeiture did not, strictly speaking, attach *in rem;* but it was a part, or at least a consequence, of the judgment of conviction. It is plain, from this statement, that no right to the goods and chattels of the felon could be acquired by the crown by the mere commission of the offence; but the right attached only by the conviction of the offender. The necessary result was, that in every case where the crown sought to recover such goods and chattels, it was indispensable to establish its right by producing the record of the judgment of conviction. In the contemplation of the common law the offender's right was not divested until the conviction. But this doctrine never was applied to seizures and forfeitures created by statute, *in rem*, cognizable on the revenue side of the Exchequer. The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing; and this, whether the offence be *malum prohibitum*, or, *malum in se*. The same principle applies to proceedings *in rem*, or seizures in the admiralty. Many cases exist, where the forfeiture for acts done attaches solely *in rem*, and there is no accompanying penalty *in personam*. Many cases exist, where there is both a forfeiture *in rem* and a personal penalty. But in neither class of cases has it ever been decided that the

prosecutions were dependent upon each other. But the practice has been, and so this court understand the law to be, that the proceeding *in rem* stands independent of, and wholly unaffected by any criminal proceeding *in personam*. This doctrine is deduced from a fair interpretation of the legislative intention apparent upon its enactments. Both in England and America, the jurisdiction over proceedings *in rem*, is usually vested in different courts from those exercising criminal jurisdiction. If the argument at the bar were well founded, there could never be a judgment of condemnation pronounced against any vessel coming within the prohibitions of the acts on which the present libel is founded; for there is no act of Congress which provides for the personal punishment of offenders, who commit "any piratical aggression, search, restraint, depredation or seizure," within the meaning of those acts. Such a construction of the enactments, which goes wholly to defeat their operation, and violates their plain import, is utterly inadmissible. In the judgment of this court no personal conviction of the offender is necessary to enforce a forfeiture *in rem* in cases of this nature."

Now, it is true that in this case of the *Palmyra*, the statute did not prescribe any personal punishment, and that the neutrality act does. But the ruling of the court embraces all cases of this nature, whether there is a double proceeding, one against the thing and one against the person, or whether there is only a prosecution against the offending thing.

In the subsequent case of the *Malek Adhel* (2 Howard, 210) the very same objection was again overruled, and the principle laid down in the case of the *Palmyra*, that the two proceedings are entirely distinct from each other, was again affirmed in the most pointed manner, and that, too, in a case where the owner was entirely innocent.

In the case of the *United States vs. the schooner Little Charles* (1 Brockenbrough, 347), which was a proceeding against a vessel for violating the Embargo Laws, Chief-Justice Marshall acted on the same distinction between an offending thing and an offending person, where the owner was entirely innocent.

Indeed, it is wholly unnecessary to go into citations from the adjudged cases. This court is perfectly familiar with the constantly recurring cases of smuggling, where, although the personal offence of smuggling is punishable by statute, it has never been deemed necessary, in order to forfeit the vessel

from which the smuggling takes place, either to produce a record of personal conviction, or allege, or prove who did the offending act, provided it is made to appear that somebody unlawfully brought goods on shore. The hardship to the owner, in such cases, is imposed by the policy of the law, in order to make him guard his property against unlawful uses, as an instrument for violating the laws of the land, and his personal guilt or personal innocence is an immaterial inquiry, provided his vessel is affected with the unlawful acts which the law makes the ground of its forfeiture.

The answer to the objection that we produce no record of a personal conviction, is also an answer to the objection that we must allege and prove, under this libel, who did the unlawful acts which are to work a forfeiture of the vessel. The authorities are all the other way, and so is the principle on which forfeitures in the admiralty invariably proceed. In a proceeding against a thing, by libel or information in the admiralty, to enforce a forfeiture for any offence, the sole inquiry is whether the property has been placed in the predicament to which the law attaches the forfeiture; and although the property, as inanimate matter, cannot put itself in that predicament, or do the unlawful acts without human agency, yet if the court can see that the unlawful acts have been done by somebody, with, or in reference to, that property, the penalty of forfeiture of the property is incurred, because the owner is bound to prevent such acts.

It is not necessary that the owners of a vessel participate in any of the prohibited acts, which affect the vessel with forfeiture, under the neutrality act.

But it is argued in substance in the present case that the unlawful acts are of such a nature that the court cannot arrive at the conclusion that they have been committed, so as to affect the vessel with forfeiture, unless satisfactory proof is produced of the persons by whom they were done; and it is even contended that those persons must be the owners, either actually or constructively; and therefore, by way of pushing your Honor into the necessity of finding that gentlemen of great personal respectability, and eminent commercial standing,—like Messrs. Forbes,—have violated the

law of the land, he falls back upon the position that actual or constructive connivance of the owner is essential to a forfeiture. Hence he argues that the offences are of such a nature that they cannot be imagined to have been perpetrated without the knowledge and consent of the owner or his agent.

Now, the examination of the statute which has already been made, shows that necessarily it does not contemplate the participation of the owner in any of the prohibited acts which are to affect the vessel with forfeiture; any more than the statutes against smuggling contemplate the actual or constructive participation of the owner in that offence, before his vessel can be forfeited. This statute is one of those where certain unlawful acts, being done with or concerning a vessel, to the extent described, the forfeiture of the vessel follows, from considerations of high public policy, either with or without the participation of the owner. In the first place, it is to be observed that the statute says nothing about the owner. It provides that if "any person," not any *owner*, but *any* person, shall do the prohibited acts within the United States, with a certain intent, forfeiture of the vessel shall follow; and it is quite evident that if the law had confined its denunciations to acts done by the owner, or with his personal, or constructive participation, the mischiefs intended to be prevented could never be effectually reached. In the next place, the prohibited acts, are acts which can be done without the personal or constructive participation of the owner, and it is evident that Congress intended, by the searching provisions of this statute, not to confine the forfeiture to cases where the owner could be affected with personal guilt. Undoubtedly, if the owner were indicted for the misdemeanor, he could not be fined and imprisoned without proof of his personal guilt; but the error throughout, in the argument of the learned counsel, we respectfully contend, consists in assuming that the forfeiture of the vessel proceeds only as a consequence of personal guilt of the

owner. This is not true, either when we consider the nature of the offences, or the policy of the law. Thus, the offence of being knowingly concerned in "furnishing" any vessel to for aeign power, with the prohibited intent, is not only an offence denounced against "any person," but it is an offence which may be committed by persons other than the owner, and without his knowledge; and if it has proceeded so far as to engage the vessel, or to put her under the control, or afford her to the preparations of such foreign power, or its agents, there can be no doubt that this offence has been committed, and the vessel stands affected by it, because it was the duty of the owner not to suffer his vessel to fall into this predicament. So, too, the offence of being knowingly concerned in fitting out any vessel, with the unlawful intent that she is to be used as a cruiser in the service of a foreign belligerent, is an offence which "any person" can commit who is not an owner, and can commit without the knowledge of the owner; and if it has proceeded so far as the putting anything on board or making any preparations of the vessel with the intent that she shall be employed in such foreign service, the vessel stands affected by it, because it was the duty of the owner to prevent it; and the case of the *United States vs. Quincy* is a direct and conclusive authority to the point that if the intent and design were once formed, and any unlawful acts were done under it, within the United States, the offence is not purged, *although the intent and design may be subsequently abandoned.* So, also, the offence of being knowingly concerned in arming any vessel, or issuing a commission for any vessel, with the prohibited intent, may equally be committed without the knowledge or participation of the owner. The same thing is true of the offences of fitting out *and* arming, or of attempting to do it, or of procuring it to be done, which the learned counsel admits are all principal offences, under this act; for all of them may be committed by persons other than the owner, and without his knowledge or consent; and when we consider

that the statute expressly declares that if committed by *any* person, the forfeiture shall follow, it would be a very strained and unwarrantable construction for this court to interpolate the words: "*with the knowledge, actual or constructive, of the owner.*"

True it is, in respect to most of these offences, that there may be more or less probability that they have, or have not, been actually committed by persons other than the owner, according as the evidence does, or does not, tend to show complicity, or negligence, or willingness, on the part of the owner, or his agent. But this probability can, by no sound construction of this statute, and by no sound rule of law, be turned by the court into an absolute requirement of proof that the owner, or his agent, participates in the unlawful act, or intent. If the court is satisfied that somebody did any of the prohibited acts, with the unlawful intent, the forfeiture is complete.

Inspection of the phraseology used by Congress in the slave-trade acts confirms us in our theory that the Federal Legislature intentionally employed the words "any person," for, in those acts, the limitation is to "either master, factor, or owner;" and in the neutrality act there is no restriction.

I need only call the attention of your Honor to the fiftieth section of the Collection Act, of 1799, which forfeits the most valuable ship which ever floated, if merchandise, to the value of four hundred dollars, be unladen by a passenger without a permit, and that where the owners, the captain, and all the crew, use their utmost endeavors to prevent such illegal landing.

This section is in these words:

"No goods, wares, or merchandise, brought in any ship or vessel from any foreign port or place, shall be unladen or delivered from such ship or vessel, within the United States, but in open day, that is to say, between the rising and setting of the sun, except by special licenses from the collector of the port, and naval officer of the same, where there is one, for that purpose; nor at any time without a permit from the collector, and naval officer, if any, for such unlading or delivery: and if any goods, wares or merchandise shall be unladen or delivered from any

such ship or vessel, contrary to the direction aforesaid, or any of them, the master or person having the charge or command of such ship or vessel, and every other person who shall knowingly be concerned, or aiding therein, or in removing, storing, or otherwise securing the said goods, wares or merchandise, shall forfeit and pay, each and severally, the sum of four hundred dollars for each offence, and shall be disabled from holding any office of trust or profit under the United States, for a term not exceeding seven years; and it shall be the duty of the collector of the district, to advertise the names of all such persons in a newspaper, printed in the state in which he resides, within twenty days after each respective correction; and all goods, wares, or merchandise, so unladen or delivered, shall become forfeited, and may be seized by any of the officers of the customs; and where the value thereof, according to the highest market price of the same, at the port or district where landed, shall amount to four hundred dollars, *the vessel, tackle, apparel and furniture shall be subject to like forfeiture and seizure.*"

In the case of *United States vs. Brig Malek Adhel* (2 Howard, 210), which was an appeal from a decree of the Circuit Court of the United States, for the District of Maryland, sitting in admiralty, and confirming a decree of the District Court, rendered on an information, *in rem*, upon a seizure, made for a supposed violation of the act of the 3d of March, 1819, it was claimed that the innocence of the owners could withdraw the ship from the penalty of confiscation under this act of Congress. To this Mr. Justice Story replied, in giving the opinion of the court:

"The act makes no exception whatsoever, whether the aggression be with, or without the coöperation of the owners. The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner. The vessel or boat (says the act of Congress) from which such piratical aggression, &c., shall have been first attempted or made, shall be condemned. Nor is there anything new in a provision of this sort. It is not an uncommon course in the admiralty, acting under the law of nations, to treat the vessel in which, or by which, or by the master or crew thereof, a wrong or offence has been done, as the offender, without any regard whatsoever to the personal misconduct or responsibility of the owner thereof. And this is done from the necessity of the case, as the only adequate means of suppressing the offence or wrong, or insuring an indemnity to the injured party. The doctrine, also, is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and has been applied to other kindred cases, such as cases arising on embargo and non-intercourse acts."

There is in the volume of Sprague's Decisions, page ahhseeca ,55 of the *Yacht Wanderer*, which was a libel of

information, claiming a forfeiture under the second section of the Slave-Trade Act of 20th April, 1818. The counsel for the claimants interposed the objection that the owner was innocent of the offence charged. To this Judge Sprague replied:

> The construction contended for, will not only violate the language, but defeat the purpose of the Act. For an owner might send his vessel on a lawful voyage to New Orleans, for example, and there his master fit her out for the Slave Trade; nay, even in the home-port, the owner has only to keep behind the curtain, while his master is fitting his vessel for the criminal enterprise, and make, at the proper time, such declarations and manifestations as may repel the presumption of complicity, and the vessel will be liable to no forfeiture. But it is urged, that it is unjust to deprive the owner of his property, when he has been guilty of no criminal purpose. No doubt it may sometimes bear hard on innocent owners. But this hardship is imposed by the general policy of our laws, when vessels are employed for criminal purposes.
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> The Legislature, to insure not only good faith, but the utmost vigilance on the part of the owners, says to them emphatically, you must, on peril of losing your vessel, see to it that she shall not be made use of as an instrument for violating the law. And if this is deemed necessary, merely for the protection of the revenue, for a much stronger reason should it be enforced against vessels to prevent their being used as instruments to carry on a trade, which not only in the eye of morality, but also in the eye of the law, is the most atrocious that man can be engaged in. We must recollect that a traffic so denounced and so criminal, will assume every disguise, false pretence and deception, which fraud and ingenuity can devise, and calls for the most stringent measures for its prevention, one of which is to enlist the owner of the vessel to prevent her being so employed in violation of the law, by holding him responsible for such use to the extent of his ownership.
>
> For these reasons, I do not think it necessary to go into the question which has been so much contested, whether Lamar had knowledge of Martin's criminal intent. * * * * * * * *
>
> In this case Martin was in possession, with the consent of the owner, and I am not called upon to decide what would have been the result, if he had been a mere trespasser from the beginning.
>
> When that case shall arise, and an owner shall leave his vessel so exposed, that a wrong-doer can seize, fit and convert her to such an unlawful purpose, it will be for the Court to consider, whether both the language and the spirit of the law do not require her condemnation.
>
> But that question is not now before me."

The closing remark of Mr. Justice Sprague may fairly be taken as a clear indication that a condemnation would be decreed if ever such question came legitimately before him.

The effect of innocency of the owner of a vessel, inculpated for violation of law, and proceeded against *in rem*, has

very recently been before this court in a prize case, and your Honor, in rendering an opinion, expounded with clearness the true relation of owner and vessel, under such circumstances. In that case, which was, the *Napoleon*, the well-known high commercial character, and moral worth of the owner, were strongly pressed upon your Honor, but to no avail. The Court said:

"The question before the Court on this trial is as to the innocency or guilt of the vessel, as if the transaction in which she was implicated was one of personal volition on her part; and that inquiry may be resolved quite independently of the individual intentions or cognizance of the parties who are made pecuniarily responsible for acts of the vessel or of the property, which incur or have imputed to them forfeitures, because of such acts. It is, accordingly, not sufficient for the claimant, in defence of this suit, to establish his own loyalty of character, and his disapproval of the connection of the vessel with the enemy, or with the illicit conduct alleged against her. The evidence on the first hearing was amply satisfactory in that respect, without the corroboration of subsequent proofs, which also show his unquestioned patriotism and rectitude as a citizen and a merchant, and that his most earnest efforts were exerted to prevent the prize from being in any way employed in aid of the enemy. But, notwithstanding his individual integrity, the vessel is responsible, in law, *in rem* for the malfeasance of the agent who had the control of her, in violating the penal laws of navigation. The most distinguished and unblemished reputation on the part of a ship-owner will not protect his vessel from confiscation, when it is engaged, though through untrustworthy agents, and without his knowledge and against his prohibition, in illicit employments, in infractions of revenue and fiscal laws, and preëminently in violating the laws of war. The *res culpabilis* has meted out to it the mulct or confiscation legally applicable to the Agent acting voluntarily in violation of law. Ships and cargoes of the largest values are constantly subject to forfeiture, without regard to the intentions of their owners, for being the means of smuggling property of trifling value into port, in evasion of restrictive laws of trade; and in time of war, a neutral ship is subject to forfeiture, if run into a blockaded port by her commander, independently of proof of instructions by or actual intention on the part of the owner, to evade the blockade, he having previous due notice of its existence and efficiency. * * * * * * * *

"Admitting, then, to the fullest extent the probity of the claimant in all his personal transactions in respect to the vessel and her voyages, and his loyalty and fair conduct, towards the laws and the rights of his own government, so far as his personal intentions or authority were concerned, the considerations set up and pressed in his behalf cannot be admitted as constituting a legal defence to the suit. They may supply a forcible ground of appeal to the executive department of the Government, in respect to the ulterior disposition of the proceeds of the prize, but the judiciary have no competency to control that matter."

The learned counsel says that it would be contrary to the

There is a

egislative, and international justice, to be administered by the court, in cases of this character.

first principles of justice to forfeit a man's property for acts in which he was not shown to have participated, when the forfeiture is part of the punishment for what is made a personal crime. But he certainly does not need to be told that in matters of high concern to the peace of a nation, its honor and dignity and good faith, there is a *legislative* justice; and that, when the principles of that justice have been clearly enunciated in statute law, which affects the rights of friendly nations, *they* have reason to demand such an administration of its provisions as shall protect them from the mischiefs against which protection has been solemnly promised to the full extent of the enacted law. In the present case, this legislative justice is undeniably founded upon the principle that owners of vessels shall not, either designedly, or passively, or blindly, suffer their property to be tampered with by the agents of foreign belligerents, to the injury, the annoyance, or even the *alarm*, of nations with whom we are at peace; and the comprehensive and searching provisions of this law, which punish not only completed wrongful acts, but attempts at wrongful acts, and conscious concernment in wrongful acts, although they are never carried into perfect execution as means of injury, evince the clear purpose of Congress to protect, not only the actual and material interests, but even the public tranquillity and national sense of security of friendly nations. If this great policy works a hardship in an individual case, that hardship is for the consideration of another department of the Government, and it can afford the judiciary no reason for overturning the will of Congress, or for declaring, by a captious construction, that we have lived for eighty years under a law that kept the word of promise to the ear, only to break it at last, to the hope of the world at large.

This court has jurisdiction to forfeit this vessel for the offence set forth in the libel.

Again: the learned counsel for the claimant contends that this court has no jurisdiction to forfeit this vessel for the offences described in this act, by a proceeding on its admiralty side *in rem;* and by way of supporting this

proposition, he proceeds to the extremity of asserting that it could be done, and must be done, if at all, under a common law indictment, by passing a sentence of personal conviction, and making the forfeiture a part of that sentence. That he really expected to convince an intelligent court of either branch of this proposition, is scarcely to be presumed.

The cases already cited of the Palmyra, the Malek Adhel, the Little Charles, not to say hundreds of others, which have proceeded under statutes which authorize forfeitures of vessels for unlawful acts, which are also punishable in those who commit them, by fine and imprisonment, although the particular statute does not expressly provide an admiralty jurisdiction for the particular forfeiture—will put him upon the inquiry whether there is not a general provision of admiralty jurisdiction which reaches all such forfeitures, but which he has ignored. He is doubtless familiar with the ninth section of the Judiciary Act of 1789, which vests in this court, as a Court of Admiralty, jurisdiction of all civil causes, of admiralty jurisdiction, and of all seizures under laws of impost, navigation, or trade, where the seizures are made on navigable waters; he has read the case of the Sarah (8 Wheaton, 391), which long ago pointed out that this court has both a common law and an admiralty side, that in cases of seizures made on navigable waters, it sits as a Court of Admiralty to enforce forfeitures *in rem*, and that the two jurisdictions, although vested in the same tribunal, are as distinct from each other, as if they were vested in different tribunals. It would be somewhat difficult for him, therefore, to show how this forfeiture is to be enforced on the common law side of this court, unless, indeed, he could make it appear that this vessel of fourteen hundred tons was *seized on dry land.*

That an information against a vessel to enforce a forfeiture, unless the seizure is made on land, is a civil cause of admiralty jurisdiction, triable without a jury and not a criminal proceeding, is rather conclusively settled by La Ven-

geance (2 Dallas, 27), the Sarah (8 Wheaton, 691), the Abby (1 Mason, 360), the Little Ann (Paine's Cir. Ct. Reps., 40), and hosts of other cases.

It is wholly immaterial, therefore, what the English neutrality statute does, or does not provide, in the way of a special jurisdiction, to reach the forfeiture. Our jurisdiction is fixed by our Judiciary Act of 1789, and it is never necessary for Congress in declaring the forfeiture of a vessel to provide special jurisdiction; nor does the jurisdiction ever fall to the common law side of this court, unless the seizure is made on land, or on waters that are not navigable by vessels of ten or more tons.

Propositions of law contended for by the government.

In conclusion, therefore, of our argument on this branch of the case, we respectfully insist that the following propositions are fairly to be deduced from the legislation of 1818:

First. If the court shall be satisfied that any person whatsoever was knowingly concerned in fitting out the Meteor, whether armed or unarmed, with the intent that she should be employed in the service of the Chilean Government, to commit hostilities against Spain, or the subjects of Spain, we are entitled to have the forfeiture decreed; and the offence of being knowingly concerned is complete, if anything was put on board, or anything was done to the vessel in furtherance of that intent.

Second. If the court shall be satisfied that any person whatsoever was knowingly concerned in furnishing, or offering the Meteor for sale to the Chilean Government, with the intent aforesaid, we are entitled to have the forfeiture decreed; and such intent is complete if the vessel was *offered* to be put under the control of the Chilean Government, or its agents, for the purpose aforesaid.

Third. If the court shall be satisfied that any person whatsoever was knowingly concerned in arming this vessel, with the intent aforesaid, we are entitled to have the forfeiture decreed; and this offence of being knowingly concerned in arming, is complete, if any warlike instruments, *or stores*,

were put on board, with the intent aforesaid, no matter whether such arming was complete, or left incomplete.

We contend, further, that the names, persons, offices, or relations of any of the individuals, who may have done any of these acts, are not necessary to be alleged and proved, provided the court is satisfied that the unlawful acts were *done*, and that the names, persons, offices, or relations of individuals, are not otherwise material than as they may tend, with other facts, to show that unlawful acts were, or were not done.

The rules of law, laid down by the Supreme Court in the slaver cases, apply to and govern the case at bar.

We now come, next in order, to the rules which, in admiralty courts, control the introduction of evidence in cases of this character, and which also must govern this court in coming to determination as to the decree which shall be entered herein. My learned friend professed, in his argument, to be somewhat amused that, in my opening statement of this case, I should have ventured to suggest to the court, that the rules of evidence, laid down in recent slaver cases, decided in the Supreme Court, and reported in the second volume of Wallace, were to be taken as furnishing a rule and measure, for the guidance of your Honor in disposing of the case at bar. It may be that his profession of amusement at my citation was sincere, but yet I have rarely seen the learned counsel laboring, in an argument, under more embarrassment, and evince more intellectual awkwardness, than when he was attempting to satisfy the court that the cases of the Kate, Sarah, Weathergage, and Reindeer had no application to the pending trial. I think an impartial observer would have found more amusement in beholding the effort of my learned friend, to make a reply to my citation, than in the citation itself. There is no substantial difference between us, as to what the Supreme Court said, and did in those cases. I am quite willing to accept his explanation as a correct exposition of the rules of evidence expounded in those decisions. He says that there were "facts, in regard to those various vessels, which tended to prejudice the own-

ers as being engaged in the slave-trade—facts which were not the least inconsistent, in any respect, with their being engaged in the slave-trade—and facts, which formed in their nature, a body of proof that they were so engaged, and yet it might be said of those facts, separately considered, that either of them did not condemn, and that each was consistent with proof of innocence, if that proof were forthcoming;" and he added, that "upon such a state of facts, when the circumstances of actual and material proof tend to produce a conviction that the vessel is designed for an illegal voyage, and, although the intent is in doubt, in such case, the court will infer the guilty purpose from omission, on the part of the claimant, to do the things which are natural, and which are proper on his part, to purge away the accusation."

Now, I repeat, I accept this as a fair statement, so far as it goes, of the conclusions properly to be drawn from these slave-trade cases; so, upon that point, so far as counsel are concerned, your Honor will have no difficulty. But he suggests to the court certain reasons why the doctrine of these slaver cases should not be applied to the case at bar, and those objections reduce themselves to the four following:

1st. The difference between the offence of being engaged in the slave-trade, and in violation of the laws of neutrality.

2d. That the action of the Supreme Court is so on the perilous edge of error, that it needs apology and explanation.

3d. Inconsistency with the doctrine previously laid down by the same court, in the case of the *United States vs. Gooding* (12 Wheaton, 471).

4th. The assertion that, in the present case, the claimants, are respectable and responsible men, and in the slaver cases, were not.

Let us examine these objections, in the order in which I have stated them. The suggestion of distinction, as matter of law, or of legal deduction, between violation of the slave-trade act, and violation of the neutrality act, is well enough in one sense, but it has no application in the point of view

suggested by the other side. The slave-trade, though declared to be piracy by the municipal laws of most nations, and a crime against humanity, is not prohibited by general international law, and, therefore, it has been solemnly adjudged that its interdiction cannot be enforced by the exercise of the ordinary right of visitation and search, which in time of peace does not exist independently of special compact. As matter of pure law, therefore, there is no foundation for the suggestion that the application of rules of evidence in slave-trade cases, is to be more stringent than in cases of violation of neutrality acts which are made to preserve the peace of the world.

The second suggestion that the decision of the Supreme Court in these slaver cases is error, or next to error, is sufficiently answered by the reply that it is *law*, and as such must be received by this court, and every other court, from end to end of the Republic.

The third objection, that there is something in the case of *Gooding* in conflict with the deduction which we seek to make from these slaver cases, is as wanting in substantial basis as are the previous objections. The case of *Gooding* was a criminal trial. He was indicted, in the Circuit Court of Maryland, under the slave-trade act, and was on trial for his life. The single question submitted to the Supreme Court was whether, upon a capital trial, the burden of proof did, or did not rest upon the United States throughout. It is amazing that there ever could have been doubt upon such a question sufficient to carry it to the Supreme Court. And we suspect that Mr. Justice Story, in giving the opinion of the court, had this in his mind when he expressed anxiety lest questions so simple in their character, should be too frequently brought before the court of last resort. At any rate, the court very properly said that the general rule of jurisprudence under our system, and under the English system, permitted a party, on trial for his life, to stand mute, and compel the Government to make out a case of

conviction beyond all reasonable doubt, but such a decision, in such a case, can have no application to the trial of the forfeiture of a ship in an Admiralty Court.

The fourth objection of the learned counsel really needs but a word of reply. It is part and parcel of the theory which he has so persistently endeavored to interweave into this trial, which is, that his clients are arraigned personally before the bar of this court. He insists upon arguing to your Honor that it is the Messrs. Forbes who are on trial, and not the steamship Meteor. To every suggestion which inculpates the vessel, he replies that it stigmatizes the owners, and he exploits a theory, as new as it is vicious, that rules of evidence in judicial tribunals, are to be varied, moulded, and changed according to the assumed respectability of the persons who happen to be defendants. Assume, for a moment, the truth of all that my learned friend claims about the mercantile standing of the Messrs. Forbes, Mr. Low, and Mr. Jerome, and the other owners of the Meteor; assume, too, that the claimants and owners of the vessels, inculpated in the Supreme Court for violation of the slave-trade acts, were the opposite of his clients in commercial standing and social respectability. Of what avail is all that in face of the fact that his clients do not offer to your Honor one word of evidence in vindication of this vessel? The old proverb, that silence is golden, may be well enough in certain relations of life, but it does not control in an Admiralty Court in a proceeding *in rem*, where the evidence on the part of the prosecution is sufficient to throw strong suspicion upon the thing which has been arrested.

The burden of proof, in suits for forfeiture in Admiralty

It is not pretended that the rules of evidence in admiralty and maritime causes relieve him who alleges a fact, from the necessity of proving it. But there is this distinction between trials in admiralty and at common law, that the burden of proof, as it is called, more readily shifts in the former from the plaintiff to the defendant, than it does in the latter. This rule is perfectly familiar to this court; the practice

under it is well defined; and there is no need of entering upon either an exposition of the rule or the practice. The underlying theory is that the claimant, or the owner of a vessel, or of merchandise seized, has, in his own hand, the means to satisfy the court that the property is innocent, provided it be really so, and that it is no hardship to require him to make the explanation, whenever the Government, by its proofs, throws upon the inculpated property strong suspicions, or, what is sometimes called, probable cause to believe that the forfeiture has been incurred. This rule of presumption is as old as this court. Your Honor has had occasion to announce it again and again.

It is doing more than necessity requires, to cite any adjudged cases which announce this elementary doctrine in admiralty trials. I therefore select at random, but a few of the numerous cases, scattered up and down the records of the Federal courts. In the case of the *Brig Short Staple* (1 Gallison, 104), which was a libel of information against a brig for violation of the 3d section of the act of January 9, 1808, which constituted one of the Embargo Laws of the United States, the defence was, that the brig was compelled to proceed to a foreign port in consequence of a hostile capture by a British armed cutter. The United States contended that the circumstances of the case were such as to outweigh all the positive testimony in the cause, and to prove in opposition, that the "*Short Staple*" was carried into a foreign port, not by force, but with her consent. The case turned on the question,—Was the capture real, or was it made in consequence of some secret arrangement between the captor and captured. Mr. Justice Story, in giving the opinion of the court, laid down the rule, in respect to burden of proof, and presumptions of law, in cases of this character. He said:

"The story here told is indeed a very extraordinary one, and yet is supported by positive direct testimony. It is, certainly, the duty of the Court, not lightly to suspect the truth of statements, clothed with the solemn sanctions of an oath, and supported by numerous concurring witnesses. But testimony, however positive, must in its nature, be li-

able to control by strong presumptive circumstances, and must be weighed with care, when it comes loaded with the temptations of private interest, and the impressions of personal penalties. It is a melancholy consideration for the court, that in the discharge of public duty, it finds itself often obliged to resist the influence of human declarations, and to rely upon the concurrence of probable circumstances.

In the present case, the claimant admits, that the brig proceeded to a foreign part and there disposed of her cargo. *It therefore becomes incumbent on him to make out a justification in point of fact, as well as law. The onus probandi rests on him, and a forfeiture must be pronounced, unless he brings the defence clear of any reasonable doubt.* Now, there are many circumstances in this case, which have a tendency to excite strong suspicions and doubts."

The same case came up, on appeal, before the Supreme Court of the United States, and is reported in the 9th Cranch, p. 55. The Chief Justice, in delivering the opinion of the court, reversed the decree of the court below, in respect to the duty of the master and crew of a captured vessel to rescue her, but in respect to the presumptions of law to be applied to cases of this character, the Court said:

"The interest which coasting vessels had in fictitious or concerted captures, undoubtedly subjects all captures to a rigid scrutiny, and exposes them to much suspicion. The case of the claimant ought to be completely made out. *No exculpatory testimony, the existence of which is to be supposed from the nature of the transaction, ought to be omitted. The absence of such testimony, if not fully accounted for, would make an impression extremely unfavorable to the claim.*

In the case of the *Brig Struggle* (9 Cranch, 71), which was an information in the District Court of Massachusetts, for violation of the non-intercourse act of Congress of June 28, 1809, Mr. Justice Livingston, in announcing the opinion of the Supreme Court, said:

"Although mere suspicion, not resting upon strong circumstances unexplained, should not be permitted to outweigh positive testimony in giving effect to a penal statute; yet it cannot be regarded as an oppressive rule to require of a party who has violated it, to make out the *vis major* under which he shelters himself, so as to leave no reasonable doubt of his innocence; *and if, in the course of such vindication, he shall pass in silence, or leave unexplained, circumstances which militate strongly against the integrity of the transaction, he cannot complain if the court shall lay hold of those circumstances as reasons for adjudging him* IN DELICTO."

In the case of the *Robert Edwards* (6 Wheaton, 187), which was a libel for alleged forfeiture under the 46th sec-

tion of the Revenue Law of 1799, the Supreme Court reaffirmed the doctrines in respect to burden of proof and presumptions of guilt, which had been laid down six years previously. The Court said:

"It will be sufficient to advert to a few of the prominent facts, to ascertain the real character of this transaction. The Court has been reminded that it ought not, without the most satisfactory and positive proof, in a case so highly penal, to decide that a violation of law has been committed. Although such proof may generally be desirable, we are not to shut our eyes on circumstances which sometimes carry with them a conviction which the most positive testimony will sometimes fail to produce. *And if such circumstances cannot well consist with the innocence of the party, and arise out of her own conduct, and remain unexplained, she cannot complain if she be the victim of them.*"

In the case of *Ten Hogsheads of Rum* (1 Gallison, 187), which was an information founded upon the 5th section of the Act of March 1, 1809, for an alleged importation into the United States of ten hogsheads of rum of the growth and manufacture of some colony or dependency of Great Britain, Mr. Justice Story says:

"It has been supposed, that the *onus probandi* is not thrown upon the claimant in proceedings *in rem* except in cases within the purview of the 71st section of the collection act of 2d March, 1799, ch. 123. And I incline to the opinion that the provision alluded to is but an extension of the rules of the common law. Be this as it may, wherever the United States make out a case *prima facie*, or by probable evidence, the presumption arising from it will prevail, *unless the claimant completely relieve the case from difficulty.* In the present case, I think the United States have *prima facie* maintained the allegations of the information. *The burthen of proof of the contrary, therefore, rests on the claimant. He, and he only, knows the origin of the goods. He can trace his title backwards, and give the history of the manufacture, or at least of his own purchase. If he does not attempt it, but relies on the mere absence of conclusive, irrefragable proof, admitting of no possible doubt, he claims a shelter for defence, which the laws of the country have not heretofore been supposed to acknowledge.* I observe that the owner, in this case professes to be a Spanish subject at the Havanna. He is, of course, in a situation peculiarly fitted to enable him to show that the rum was of domestic and not of foreign origin. *The neglect so to do affords a presumption, that the case does not admit of a satisfactory explanation.*"

Another case upon this subject is that of the *Kate* (2 Wallace, 350), in which the Supreme Court distinctly affirms the proposition of Mr. Justice Betts, in the court below, that, "when the evidence on the part of the Government creates

strong suspicions or *well-grounded suspicions* that the vessel seized, as being employed in the slave-trade, was fitted out or fitting out for that purpose, the decisions in this court have been uniform and distinct, that such evidence must produce her conviction and condemnation, *unless rebutted by clear and satisfactory proofs on the part of the claimants, showing her voyage to be a lawful one.*"

In the *Sarah* (2 Wallace, 366) the principles of the preceding case (the Kate) are re-declared, and a vessel,—bound to Africa, under circumstances, *individually not very strong, but collectively of weight*, raising a presumption which there was no effort to overcome by explanation,—was condemned.

In the *Weathergage* (2 Wallace, 375), and in the *Reindeer* (2 Wallace, 383), there is reannouncement by the Supreme Court, of the rules of evidence which govern in subjects of this character. In the latter case, the Court says:

"Suits of this description necessarily give rise to a wide range of investigation, for the reason, that the purpose of the voyage is directly involved in the issue. Experience shows that positive proof in such cases is not generally to be expected, and for that reason among others, the law allows a resort to circumstances, as the means of ascertaining the truth. Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof. Applying that rule to the present case, we have no hesitation in coming to the conclusion, that the finding in the Court below was correct."

My opponent, when addressing the Court upon this branch of the case, dwelt with much fervor, upon what he deemed to be the outrage of requiring his clients to condescend to come into court, and make explanation of suspicious circumstances. He permitted us to be informed of the theory of morals, the ideas of personal honor, and chivalrous conduct, which, in his own office, control in such matters. He called attention to what he characterized as an old French proverb, which, when translated into English, runs: "He who excuses himself, accuses himself;" and intimated that this proverb was for him the measure which determined when it was proper for his client to be called upon to make ex-

planation of damaging circumstances. Now, such a rule may be well enough in relations between my friend and his clients, but I respectfully submit that this court does not administer justice upon any such notion. The rule which prevails here is, that when the Government makes out a case of strong suspicion against a ship, or any other piece of property, he who claims it, as owner, must come into court and make all needed explanation, and purge away the suspicion, or else his property will be condemned. The learned counsel is as well aware of this rule as anybody else. One who has been employed exclusively, either in criminal trials, or common law cases, might well enough be misled as to the presumptions of law in an Admiralty Court, but not so the counsel for the claimants. He has reason to know that he who defends a forfeiture case in this tribunal, must prepare for trial upon the theory that the burden of proof will shift oftentimes upon very slight testimony, and that this will devolve upon him the affirmative of the question. A lawyer who conducts business here upon any other theory, will find the property of his clients slipping from under them and him, with fearful rapidity. But with this knowledge, and with a clear perception of the risk to be run, my learned friend declines to produce any testimony. What necessity drives him to adopt such a dangerous line of tactics? He could not hope either to dupe this court, or to induce it to change the settled rules of admiralty proceedings. Why, then, did he not vouchsafe explanation? Why did he not produce evidence which would even place this case within the theories of law for which he has so strenuously contended? Why did he not clear up the numberless mysteries, as he calls them, which hang around the Meteor? Mr. Forbes was in court; the captain of the Meteor was in court; every officer and man on board were within his reach, and yet the defence is dumb. The only explanation of this silence is, that speech, on their part, would be confession.

The Government insists that the presumptions of law are Legal con-

Sequence of the claimants failing to produce books and papers, in compliance with due notice served upon them.

against the claimants of the Meteor, for another reason, growing out of their conduct during the trial. Mr. Robert B. Forbes having testified, in effect that books were kept in Boston by Messrs. Forbes & Co., fully disclosing the affairs of the Meteor, and all that had been done respecting her, a notice was duly served on their counsel "to produce all books of account of R. B. Forbes, or J. M. Forbes, or J. M. Forbes & Co., having entries in relation to the ownership and expenses chargeable against the steamship Meteor, and also all letters written or received by R. B. Forbes, or J. M. Forbes, or J. M. Forbes & Co., or any other persons having interest in said steamship in relation to her building, equipment, chartering, *sale, or disposal*," which notice was marked Exhibit M.

To this notice, answer was made that they "had no books to produce;" and we are not without positive decision of the Supreme Court of the United States as to what the effect of such refusal is.

In the case of *Clifton* vs. *the United States* (4 Howard, 242), which was a libel of information founded upon a seizure of seventy-one cases cloths, imported into this country, and alleged to have been forfeited by fraudulent undervaluation in the invoice, the counsel for the Government, in the progress of the trial, and in pursuance of a notice given some months previously, called upon the claimants for the production of their ledger containing entries of each of the several invoices of the goods thus imported; also, for the production of their cash book, and for the entries therein relating to the said importation, to each of which calls, the counsel were answered that the claimants had no such books in court. Thereupon the court below instructed the jury that "to withhold testimony which was in the power of a party to produce, in order to rebut a charge against him, where it was not supplied by equivalent testimony, *might be as fatal as positive testimony in support or confirmation of the charge;* that if the claimants had withheld proof which

his accounts and transactions with these parties afforded, it might be presumed that, *if produced, they would have operated unfavorably to his case.*" This instruction, given to the jury, was excepted to by the claimants, and the point carried to the court of last resort, where Mr. Justice Nelson, in giving the opinion of the court, said:

"The instructions had a direct reference to, and are to be construed as intended to bear upon, the matters of defence, probable cause having been shown; and upon the nature and species of the evidence relied on by the claimant in support of it; and in this aspect of the case, at least, without now referring to any other, we think they were not only quite pertinent to the question in hand, but founded upon the well-established rules and principles of evidence. The prosecution involved in its result, not only the forfeiture of a considerable amount of property, but also the character of the claimant, both as a merchant and an individual. He was charged with a deliberate and systematic violation of the revenue laws of the country, by means of frauds and injuries.

Under these circumstances, the claimant was called upon by the strongest considerations, personal and legal, if innocent, to bring to the support of his defence the very best evidence that was in his possession, or under his control. This evidence was certainly within his reach, and probably in his counting room, namely, the proof of the actual cost of the goods at the place of exportation. He not only neglected to furnish it, and contented himself with the weaker evidence, but even refused to furnish it on the call of the Government; leaving, therefore, the obvious presumption to be turned against him, that the highest and best evidence going to the reality and truth of the transaction would not be favorable to the defence."

Upon this peremptory decision of the Supreme Court, we are authorized to ask your Honor to presume that the production of the books thus called for by us, and shown to be in the possession of the claimants, would have furnished evidence unfavorable to the defence.

Complaint of the counsel for the claimants that his clients were not called as witnesses upon the merits, and so endorsed by the United States.

The claimants' counsel saw fit to preface his comments upon the evidence produced on the part of the Government, by strictures somewhat severe, upon the manner in which the late lamented District-Attorney had seen fit to marshal his testimony. He made profert of distress at the absence of this, or the failure on our part to call the other man. A person named Byron, seems greatly to have worried the claimants by his absence. It never seems to have occurred to them that his testimony might have been merely cumulative, or that they could have called him into court. And,

strangely enough, it is made topic of complaint by Mr. Evarts that we do not interrogate his clients, the Messrs. Forbes, and did not introduce to your Honor, Mr. Cary, and the captain of the Meteor. The Court has not forgotten the experience which we had with the Messrs. Forbes in the early part of the trial of the case, nor the reluctance with which they, and Mr. Low, were brought to give direct and truthful answers to the very proper questions which I propounded. Your Honor cannot have forgotten how Mr. John M. Forbes, in despair of being able to elude or escape me, at last, in a tone pitiable indeed, replied in substance, "*if my counsel, Mr. Evarts, will permit, I will tell the truth about the ownership of the Meteor.*" It did not require great prescience on the part of the late District-Attorney, to determine then, that, in future, it would be better for Mr. Evarts rather than for ourselves, to examine Mr. Forbes, if truth was to be readily elicited, or facts which could be of any service to this court in coming to a proper conclusion in respect to this case. True enough, the Messrs. Forbes, and Mr. Cary, were here upon summons issued on the part of the United States; but they were called to give evidence upon the preliminary question of ownership, and not upon the merits of the cause. More than this, your Honor remembers that, when Mr. John M. Forbes was called to the stand by us, and some discussion ensued in respect to his testimony, my friend on the other side distinctly warned the Court, and the counsel for the prosecution, that he should, at a proper time, object to the Government calling the claimants to the stand upon the merits. Now, with such a proclamation in advance, and with our experience in regard to the reticence of the Messrs. Forbes, there was no wish, or purpose, on our part to again produce them, and so be made, directly or indirectly, responsible for any statement they might see fit to make, or refuse to make.

Inquiry whthe counsel for the claim-

But the captious and unreal character of this objection will be better appreciated when the Court recalls the fact

that the Government did place upon the stand Mr. Jerome, one of the owners of the ship, and offered him to the cross-examination of the other side. Did they venture to put to him one single pertinent interrogatory in respect to the sale of the ship, or to her fitting out with intent to cruise in behalf of Chile? The Government proved by Mr. Jerome that he, as one of the owners, solicited the Chilean Minister to make a purchase of the Meteor; and the claimants' counsel did not *dare*—yes, that is the word—to examine the witness as to the circumstances under which she obtained her clearance, and endeavored to depart from this port. Your Honor will remember that Mr. Low, another one of the owners, who, called by us on the preliminary question of ownership, went upon the stand beset with a desire, as a certain class of witnesses always are, to talk about everything but the topic suggested by the questions, stated that he had received letters from Mr. Forbes in respect to the disposition of the Meteor, and had made replies. Why did not the claimants' counsel call and examine Mr. Low, who evidently knew under what conditions this vessel made ready for sea in January last? Why was not Mr. Low offered to our cross-examination? The captain of the Meteor, too, where is he? What were his instructions from Mr. Forbes, if he had any? Why were they not put in proof? It is in evidence here that the vessel cleared for Panama. That is proven by the manifest, which recites the fact. What was the captain to do with the vessel when he arrived at that port, if it ever was expected that she would reach there? To whom was the vessel consigned? How does it happen that she was to go around the Cape without cargo? On the preliminary issue, Mr. Dickinson did, as I have said before, direct that certain persons, in the interest of the ship, be put upon the stand on the question of ownership, but when, on the witnesses manifesting reluctance and unwillingness, I was obliged to press them with questions somewhat leading in their nature, the counsel upon the other side made captious

ants did not offer his clients to the examination of the court, and the government; and why his clients did not insist upon making apparent the honesty of the proposed voyage of the Meteor, if it really was honest.

objections, and insisted that I should not cross-examine my own witness. All this talk about our failure to put Mr. Forbes, or Mr. Cary, or Mr. Low, upon the stand, is, I submit, mere pretence and subterfuge. It is not sincere, and is not uttered in the presence of your Honor with a view to the ascertainment of legal truth. It is done for prejudice; nothing but prejudice.

But above and beyond all this, why did men of the age, character, and intelligence of the claimants, not insist and demand that they be allowed by their counsel to go upon the witness stand, and clear away the suspicions which gather around the Meteor? What power is it which has arrested, and arraigned their ship? Is it not their own Government? Where is their loyalty? Do they venture to suggest that the late District-Attorney was inspired by any other motive than the public good? Is it to be intimated that the Secretary of State was moved by personal ill-will toward Messrs. Forbes, to publicly approve the conduct of Mr. Dickinson in detaining the vessel? Clearly not. The prosecution had no other aim or end but the public weal, and the public peace. And yet, the claimants stand dumb, and "open not their mouths." Would innocent men fail to speak out? Would they tolerate, for the millionth part of a second, a legal adviser who ventured to restrain them from acting the part of brave, true men, by stepping forward for the protection of their own character?

Objections that a portion of the evidence of the prosecution is inadmissible, because hearsay and secondary.

My opponent devoted a great portion of the last day of his argument to complaint, and arraignment of the character of our evidence. He characterized it as hearsay, secondary, trivial, and immaterial. Now, every lawyer knows that, whether evidence be secondary or primary, trivial or important, immaterial or material, depends on the nature of the issue, and the allegations to be proved. The inquiry here is:

First. Were any persons knowingly concerned in furnishing or fitting out the Meteor?

Second. With what intent were they so concerned?

Nobody denies—the counsel himself does not deny—that Wright, McNichol, J. F. Nichols, and Conklin were *concerned* in furnishing, or fitting out the Meteor. That is clear. This starting point is conceded. It is also equally clear that these persons were either conspirators with, or agents of Mackenna and Rogers. These two propositions are undeniable. They lay on the face of the whole transaction. If, then, these persons were conspirators, the court being satisfied of the connection and association of these individuals (Wright, McNichols, J. F. Nichols, Conklin, Rogers, Mackenna) in the enterprise, every act and declaration of each member of the conspiracy, in pursuance of the original plan, and with reference to the common object, is, in contemplation of law, the act and declaration of all, and is therefore original evidence against each of them. This doctrine is made indubitable by the case of *American Fur Company* vs. *United States* (2 Peters 358–365). If these persons are agents of Mackenna and Rogers, a kindred rule governs, as is apparent by case of *United States* vs. *Gooding* (12 Wheaton 468).

In the case of the *American Fur Company* vs. *The United States* (2 Peters 358), which was an information of sundry goods seized as forfeited under the provisions of two acts of Congress for regulating trade and intercourse with the Indian tribes, Mr. Justice Washington, in giving the opinion of the Supreme Court, laid down the federal doctrine in respect to *declarations* in very broad terms, as follows (p. 364):

"The objection to the evidence of Davis is so fully answered and repelled by this court in the case of the United States vs. Gooding (12 W., 468), that it seems necessary only to refer to that decision. That was a criminal prosecution against the owner of a vessel, under the Slave Trade act of Congress, and an objection was taken by his counsel to evidence of the acts and declarations of the master of the vessel, who was proved to have been appointed to that office by the defendant with an authority to make the fitments for the vessel.

"*The principle* asserted in the decision of that point and applied to

the case was, that *whatever the agent does or says, in reference to the business in which he is at the time employed, and within the scope of his authority is done or said by the principal, and may be proved as well in a criminal as a civil case, in like manner as if the evidence applied personally to the principal.*

"The opinion of the court in the present case is not less correct, whether Davis is considered by the jury as having acted in conjunction with Wallace, or strictly as his agent. For we hold the law to be, that *where two or more persons are associated together for the same illegal purpose, any act or declaration of one of the parties in reference to the common object, and forming a part of the res gestæ, may be given in evidence against the others;* and this we understand, upon a fair interpretation of the opinion before us, to be the principle which was communicated to the jury."

I make no mention, now, of the admitted rule in Admiralty Courts, that when the claimant, by his silence, compels the Government to resort to circumstantial evidence to prove the offence, then objections of the character of those made by counsel, and just commented on, are not favored by the Judge. It is by the connection of all the circumstances together, that items of proof are to be made material, and admissible, and not by taking up singly each piece of evidence, and looking at it in detail. But, apart from all this, we contend that our evidence is legal evidence, competent and sufficient to condemn this vessel. It comes fully up to the standard and measure of the slaver cases in the second volume of Wallace's Reports.

Reply to the insinuation that the witnesses of the government, in this case, are intermeddlers.

The Government witnesses are repeatedly characterized by the claimant's counsel as "intermeddlers." They certainly are, or were, associates, friends, and agents of the Chilean Government, and very far from being willing witnesses for the United States. McNichols, Conklin, and Wright were employed by the Chilean Consul at this port. He inspired, promoted, and directed their acts, which have, under compulsion, been related here. We did but use the material which the Chilean Government used. But was Jerome an "*intermeddler*," when he made an appointment with Asta Buruaga, the Chilean Minister, to go on board the Meteor, to see if the latter would purchase her? Was Cary an "*intermeddler*," when he offered, for money, to place the

Meteor at the disposition of the Consul of Chile, and pursued Wright to complete the negotiation for selling her to that Government? Was the captain of the Meteor an "*intermeddler*" when he paid his visits to the house of Mackenna, who is the Chilean head-centre in New York?

But the real character of the witnesses for the Government can be best seen by a careful review of the mass of testimony taken during the trial.

No effort by claimants to impeach character of of the witnesses of the government.

And here it is important for your Honor to note that there has been no attempt to shake the testimony for the United States, by witnesses called by the claimants. There has been, on the other side, no attempt to impeach the character of our witnesses; no effort to prove other declarations by them, inconsistent with those made before your Honor; no endeavor to show hostility on their part toward the owners of the Meteor; in a word, no undertaking by testimony of the claimants to make our witnesses appear untruthful. The Government witnesses passed through the ordeal of the bitter cross-examination, untouched and unharmed. They, therefore, stand before this Court, unimpeached, as they are unimpeachable. All their statements, in the utter absence of anything to the contrary, must, in a legal sense, be taken to be *true*.

What has been proved?

Facts proved in the case.

1. That the Meteor was built by Robert B. Forbes, "and a few friends, to cruise after British pirates, and she would have been taken over by the United States, had not Fort Fisher fallen just as it did." She was, therefore, constructed for war purposes. She was designed "to cruise, or commit hostilities." The letter of Forbes to Schmidt, makes any further comment on this point unnecessary. The description of her, given by her builder, is redolent of war and battle, and negatives the idea that any peaceful purposes entered into her organization. Forbes says: *She was designed to carry one heavy pivot amidships on gun-deck, or two* 10-*inch or other guns at the same point, namely, just before the*

mainmast; forward of this are two ports (two on each side), where 8 or 9-inch Dahlgrens would have been mounted, had she been taken by the United States Navy Department, and abreast of the engine hatch, aft, there are two ports on each side, where she could have mounted short 32-s, or 24-pound howitzers, and on upper deck there are beds for two 30-pound Parrotts, making one pivot, 11-inch or two 10-inch; four broadside, 8 or 9-inch; four 32 or 24-pound howitzers on gun deck; two light chase guns on upper deck. She has two 6½ by 36-inch cylinders; four tubular boilers; propeller of brass, 13½ feet chain, and 23 feet pitch. The motive power, boilers, &c., were imported from Scotland at a very large cost, and are first quality.

2. Robert B. and John M. Forbes appear in the register as sole owners, but other parties, including Jerome and Low, are also interested. Their interest is of the same character as the Messrs. Forbes, and on a sale of the vessel, the proceeds would be distributed, among those interested, *pro rata.* (See pp. 67, 80, 88).

3. That the vessel belonged to no regular line of trade, was in no business, and was for sale, Forbes says, in his letter to Schmidt, under date of Sept. 12, 1865: "*The Meteor is for sale*, but I have not offered her, because she needs cleaning up and painting after her late experiences carrying troops and cargoes. She can be bought for much less than cost, and much less than she can be built for to-day. I cannot name a price till I consult the other owners. *I am open to an offer.*"

Her other owners urged an immediate sale. Mr. A. A. Low, one of the owners, when interrogated on this point, answered as follows:

Q. You state that you have had conferences with Messrs. Forbes about the disposition of the ship; how many have you had? A. Mr. Forbes addressed letters to us occasionally, but I think principally with reference to sending the vessel abroad, to which we dissented; we thought the ship should be sold at home, *the purpose having failed for which she was built—the Government not requiring her;* we insisted that she should be sold at home.

Q. You consider that you had a right to insist upon the disposition of the ship? A. When we were consulted as to the disposition of the vessel, we expressed ourselves in that way.

Q. How many times have you been consulted? A. Within a year, two or three times, by letter.

Q. How recently? A. Not within several months, that I am aware of.

Q. How many months? A. Not since 1st of January, I think.

Q. You were consulted about the 1st of January? A. No; I think earlier; in the autumn, or possibly a late as the 1st of January; I think not as late as the 1st of January.

Mr. William H. Aspinwall, another owner, confirms the previous testimony that the vessel was only suitable for war purposes, and, that those interested desired to get rid of her as speedily as possible. The following is his evidence upon this point:

Q. Have you had any conversation about employment or sale? A. I have advised her sale.

Q. At what time? A. I think in the month of October.

Q. Since that, have you advised her sale? A. Yes, sir.

Q. At what time? A. I should think, within three or four months.

Q. In Janury? A. I cannot remember when.

Q. December? A. I cannot remember; I never had it much on my mind.

Q. Why did you advise her sale? A. Simply because the object for which the ship had been built was passed, and did not wish to have it on my mind at all.

Q. You believed it was for the interest of the owners, or for those interested, to sell? A. I did not pretend to judge about it; I thought that the gentlemen had trouble enough about it, and had better end the matter.

Q. And preferred to get your money back, to have it rest there? A. Yes, sir.

The testimony of Mr. Jerome, another one of the owners, is, like the others, conclusive upon the point that the owners desired to get rid of the "Meteor." In his re-direct examination (p. 320) he stated distinctly that "the ship was for sale."

4. A state of war has existed between Spain and Chile, since September 25, 1865, and from that date, until the present time, the United States have been at peace with both nations; that from the date of the declaration of war between these countries, until February 12, 1866, Stephen

Rogers was Consul for Chile in New York. (See Certificate of Secretary Seward, p. 106.)

Benjamin Vicuna Mackenna was special agent for Chile in the United States, appointed prior to October 1, 1865, arrived in New York November 19, 1865, and occupied that position at the time of the seizure of the Meteor. (See his testimony, p. 110, also testimony of Ramsay, and Ex. I., pp. 309–310.)

5. The owners of the Meteor were concerned in offering and affording the Meteor to the Chilian Government.

Mr. Jerome solicited the Chilian Minister to go with him to Jersey City to look at the vessel, "to see if he would buy her," *or*, to induce him to recommend her to his Government, in case "the occasion might turn up," in which that Government needed such a war vessel. In his direct examination, Mr. Jerome, when first called to the stand, answered in these words:

Q. Have you ever been on board the Meteor? A. Yes, sir.
Q. When were you on board of her last? A. I never was on board but once.
Q. When was that? A. Some four or five months ago.
Q. In whose company were you at that time? A. Mr. Asta Buruaga's, the Chilean Minister; I think no one else.
Q. Was Mr. R. B. Forbes along at that time? A. I think not.
Q. What is your best impression? A. My best impression is, that he was not; I am quite sure he was not.
Q. Where was the vessel lying at that time? A. At Jersey City.
Q. Did you and the Chilean Minister go together to visit her? A. No, I think not; I think I met him there.
Q. By agreement? A. Yes.
Q. What was the agreement you made with him by which you met him there? A. I asked him to look at the ship.
Q. For what purpose? A. To see if he would buy her.
Q. And did he look at the ship? A. He did.
Q. Did you and he examine the ship together on that occasion? A. We went through her partially, not much.

Mr. Jerome, having testified, that he never was on board the vessel but once, and that "some four or five months ago," was then asked what month it was that he and Asta Buruaga, the Chilian Minister, visited the Meteor together, and he could not fix the month. He thought it was before

the arrival of the news of the declaration of war, but yet could not tell when that news of the declaration was first heard by him. As near as he could fix the time, it was somewhere in the year 1865, which made it apparent that he was very likely to be mistaken in supposing that he invited the Chilean Minister to go on board the Meteor prior to the declaration of war. On his re-direct examination, Mr. Jerome varied his previous statement somewhat, in respect to the Chilean Minister. In order that I may do no injustice to the witness, I read in full this subsequent statement.

Q. I understand you, on your direct examination, that he wanted to buy the ship?

[Mr. Evarts objects that the witness did not use that language.]

Q. Did I understand you as stating, on your direct examination, that the Chilean Minister desired to purchase the ship? A. No, sir.

Q. What did you say in regard to that matter? A. I said I asked him to go and look at her.

[The stenographer, Mr. A. F. Warburton, was called upon to read the witness his testimony.]

Q. Do you desire to change your testimony in that respect, or is it correct? A. Not exactly; I am recorded there as saying that I asked him there to see if he would buy her.

Q. In what particular is your testimony incorrect? A. I could not expect him to buy her, because he had no power to buy her, as I understood; the ship was for sale, *and I wanted him to look at her; perhaps he might recommend her.*

Q. You say you did not expect him to buy her? A. No, sir.

Q. Because he had not the authority to buy her? A. No.

Q. Who did you suppose had the authority to buy her? A. I did not suppose any one had, at that time; *I thought the occasion might turn up.*

Q. How did you know he had not authority to buy her? A. *I did not know.*

Q. What did you mean, when you said you did not suppose he had authority to buy her? A. I simply did not suppose he had.

Q. Who did you suppose had? A. I did not suppose any one had.

Q. Why, then, did you ask the Chilean Minister to look at the ship? A. *Well, I thought the occasion might turn up that he might want to buy her.*

It is clear, upon examination of the *whole* testimony of Mr. Jerome, that, as a part owner of the Meteor, he was willing, and made effort, to place this war vessel under the control of the Chilean Government. He was knowingly concerned in furnishing the "Meteor" to that Government.

It is in evidence that Mr. William H. Cary has also been

concerned in offering, or affording the Meteor, to Chile. Mr. Cary, it will be remembered, was the agent of the owners, and had from them authority to dispose of her. Wright testifies as follows, in respect to his interview with Cary:

Q. Do you recollect anything more of that interview with Mr. Cary? A. No, sir.

Q. Was anything said by him at the interview with you, to the effect, or in substance, that he had already had negotiations for the sale of the Meteor to the Chilean Government?

Objected to by claimant's counsel.

The Court—Ask what conversation he had? A. As I have said, at that time he said he had already been in *treaty* with them, and they had no money.

It will be remembered that this reply of Cary to Wright was made when the latter, in behalf of Rogers, the Chilean Consul, applied to the former to know the terms upon which he could procure the Meteor, and the former had in turn called on Wright, at his office. Wright then told Cary that it was the Chilean Government for whom he wished to purchase the vessel. In response to that information came the reply from Cary that he had already been in treaty with the Chilean Government, and its agents had no money. This was about the middle of December, 1865, and fixes the fact that prior to that the agent of the owners of the Meteor had, as well as Jerome, been concerned in placing her under the control of the Chilean Government. (See p. 117).

Wright having informed Cary that, in his opinion, the agents of the Chilean Government in New York could make an arrangement for money, the latter called again on Wright at his office about December 20, 1865, "to ask if there had been anything done" further, in respect to the Meteor.

McNichols also testifies (pp. 167–168) that Rogers, in November, 1865, told him that "the special agent or the Chilean Minister had been *negotiating* about the Meteor, and the delay was for want of funds." Rogers also said that "the Meteor was offered to the special agent or Chilean Minister for a little less than two hundred thousand dollars in gold."

Thus we have it from Jerome, Cary, and the Chilean Consul, that the owners of the Meteor did, after war was declared, endeavor to put that vessel under the control of Chile.

Having established these five important points, it will be convenient now to take up the witnesses one by one.

Ronald McNichols testifies that he knows Rogers and Wright; that he does not know Mackenna (p. 163); that he first saw Rogers in the latter part of October, or early in November, 1865; that he called on Rogers at his home, in company with Conklin; that Rogers told him, at this interview, that he wanted "wooden propellers for war purposes for the Chilean Government," and heavy ordnance for the navy (p. 164); that Rogers wished to know if witness had facilities for the procurement of such vessels, and on being told that was in witness's line, authorized him to procure names of such vessels, and furnish him with estimates of their cost, and also estimates for ordnance; that, in pursuance of this employment, witness ascertained the names of a number of vessels, called on him a second time, and gave him their names and descriptions in writing (p. 165); that witness and Rogers then had conversation, in reference to mode of procuring clearance from Custom House; that Rogers told witness he would submit his estimates to the Chilean Minister, or agent, and see witness again; that about three weeks later, after having had repeated interviews, witness furnished Rogers with the name of the Meteor, and an estimate of her cost and armament; that this was done at Rogers' home in presence of Conklin; that Rogers remarked he did not think the brokers whom witness had named as having offered the Meteor had control of that vessel; that he, Rogers, understood arrangements were made about the Meteor, and that she was out of the market; that Rogers said the *Chilean Minister*, or special agent, had negotiated for the Meteor, and the only delay was want of funds; that the Meteor had been negotiated for on more ad-

vantageous terms than those offered by witness; that she had been offered to the special agent or minister for $200,000 *gold*, but that if a capitalist could be found to advance the money for her purchase, it would be advantageous, and he asked witness to ascertain with certainty whether Wright had control of the vessel; and that if a capitalist could be found to advance the money to Mr. Forbes, and *clear her* from this port, the Chilean agent would pay a very handsome price; that witness saw Rogers on the following night, assured him Wright had entire control of sale of the Meteor, and had conversation with him about payment for the vessel by drafts on the Chilean Government; that Rogers said he could not tell exactly the style of the drafts until he heard from the Chilean Minister at Washington; that when Rogers told witness he did not think Wright had control of the Meteor, he called at Wright's office to ascertain; that Wright showed witness a telegram or letter from Forbes, which showed Wright had authority to sell the vessel. At this interview, witness was in one office at Wright's place; and Wright said Mr. Cary was in another of Wright's offices; that Wright came from the outer office, where Cary was, and wanted to know our principals. "I told him the Chilean Government." Wright went into the other room, and, as witness understood, told Cary the vessel was wanted for Chile. In order that Wright might understand the character of the bonds proposed to be given by the Chilean Government, witness, *by appointment with Rogers*, called with Wright on Rogers; they had conversation about the difference in exchanges, and about difficulty in obtaining clearance for the vessel; in the conversation with Wright, Rogers said Mackenna (the confidential agent) did not want to advance money on any vessel until she was outside of Sandy Hook, but afterward Rogers told witness Mackenna would run one-third the risk of getting the vessel out, so that the capitalist would only run two-thirds risk; witness and Rogers had many interviews with him about clearing the ves-

sel; that Rogers told witness Captain Catesby Jones had been employed by Mackenna as inspector of vessels, "*and helping him carry on the business.*" That on Saturday, prior to the seizure of the Meteor, Rogers called on witness at his office, and told him the "matter of the Meteor was settled; he understood the Meteor was to clear next week for Panama; *that the purchase of the Meteor was all settled.*" Rogers said she was going to clear for Panama. It was an understood thing what purpose she was to go for. At this interview, Rogers said Mackenna was making use of the information Wright and witness had given, and had employed other parties to accomplish his object; that on the following Monday morning, Rogers called at witness's office, and told him the Meteor would clear that day. (See pp. 164, 180).

Julius Conklin testifies (pp. 220 to 235), that he was at Rogers' house on the Saturday preceding the seizure of the Meteor, and narrates the conversation between Rogers and McNichol thus: Rogers remarked to McNichol that the Meteor would probably sail on the first of the next week, perhaps on Monday, and "*that all arrangements had been completed for her sale to the Chilean Government.*" Rogers added that he believed these arrangements had been completed by Mackenna. (See p. 222).

Charles L. Wright testifies (p. 214), that he is a ship broker; that about December 1st, 1865, Byron called on him with McNichol and Conklin, and wanted to purchase three or four steamers; that witness gave him a list of vessels, among which was the Meteor; that the next day he called on witness again with McNichols and Conklin; that they said the Meteor would suit, and desired witness to ascertain the price at which she could be bought; that witness thereupon communicated with Forbes in Boston, through witness' brother, and learned the Meteor could be bought for $350,000; that subsequently witness wrote R. B. Forbes (see Ex. p. 115), and the next day received reply from J. M. Forbes & Co. (Exhibit H), that anything

Messrs. Cary & Co. engaged would be duly ratified (p. 115); that at, or about the time of witness' letter to Forbes, Cary called on witness at his office, stated he had understood witness was communicating with Forbes about the purchase of the Meteor; that he, Cary, had as much to do with her as Forbes; Wright further says that, at this interview, witness told Cary he would communicate with him again, as soon as he got anything definite; that a day or two afterwards, Cary called again on witness, and Conklin, McNichol, and Byron were in one room and Cary in another; that, at this time, Cary wanted to know who were witness' principals; that witness told Cary he thought the ship was wanted for Chile, but to make certain, went into the room where Conklin, McNichol, and Byron were, inquired of them, and being told they represented the Chilean Government, so reported to Cary; that Cary then remarked, "If these are your parties, you can do nothing, as they have no money;" that witness told Cary, he thought they had, and would see Cary again; that at this interview Cary said, "he had *already been in treaty with the Chilean Government*, and it had no money" (see p. 117); that Cary after that *called again* (p. 116); that, prior to this interview, witness called on, and had conversation with Rogers, and he informed witness that Conklin, McNichols, and Byron were looking about for vessels for him (p. 135); that witness inferred, from what Rogers said to him, that these men were acting under authority from Consul Rogers, and witness continued negotiations with them under that impression; that this was about the middle of December, 1865 (p. 117); that at this interview, Rogers told witness the special agent of Chile wished to purchase vessels; that he wanted *armed* vessels; that they talked about the Meteor, and witness suggested it would be difficult to get an armed vessel out of the port; that the Meteor was built for war purposes, and it would be difficult to get her out; that Rogers told witness the Meteor would suit him, and he wanted her for the Chilean Government; that

on the 26th December, 1865, witness, still acting for Chilean agents, addressed Exhibit L, to Messrs. Cary & Co. (see p. 119); that subsequently witness had conversation with Rogers about Mackenna; that on Thursday or Friday, prior to the seizure of the vessel, witness saw Rogers, and said *he understood the Chilean Government had bought the Meteor;* that Rogers replied he, personally, "had nothing to do with the purchase of the Meteor," but that he believed Mackenna had (see p. 118).

J. F. Nichols testifies that he knows Forbes, Wright, Rogers, Mackenna, Byron, Conklin, McNichol, and Captain Kemble, of the Meteor; that he first called on Rogers with one Bates, to ascertain if a Chilean letter-of-marque was genuine; that Rogers said it was; that Bates left the same with Rogers, with instruction to give it to witness if he raised stock for a privateer; that Rogers said a special agent of Chile would soon be here, and then he would know what the Government intended to do; that at one other interview, Rogers told him parties representing Chile (thinks it was the Minister) had been on board the Meteor with reference to her purchase, liked her much, and Rogers wanted witness' opinion of her (p. 243); that Rogers afterward told witness of the arrival of special agent Mackenna; that after interviews with Rogers, witness examined the Meteor at Wright's request, made an estimate of armament she would require, and gave it to Conklin, or McNichols; that subsequently witness saw Rogers with Wright, and, at his request, furnished him with estimate of what it would cost to get the Meteor out to some foreign port; that witness had many interviews with Rogers; that in these the difficulty of the Chilean Government in paying *cash* for vessels was discussed, and drafts frequently spoken of; that witness called on Mackenna with a card of introduction from Rogers; told him he would like employment in the Chilean navy, or to get command of some Chilean vessel, fitting out in New York; Mackenna said he had heard of witness from Rogers;

that he would bear witness in mind if opportunity offered. Witness told Mackenna he understood Catesby Jones had been appointed inspector of vessels for the Chilean Government; that Mackenna replied "he had inspected some" (p. 249); that, at this interview, witness mentioned the names of several vessels to Mackenna, and Mackenna objected to them on the ground that they were too old, &c. (p. 250); that on the Friday preceding the seizure of the Meteor, witness was on board; saw stores being put on; was told by a stevedore employed about the vessel, she was bound for Chile; that there was no cargo on board, only stores and provisions, and rifles and ammunition; that at this time he saw R. B. Forbes on board; had conversation with him; heard him give directions to place rifles in the racks; that as witness and Forbes were leaving the ship, Forbes remarked she was very buoyant, considering she had 750 tons of coal and six months' provisions; that he accompanied Forbes to New York, and on the ferry boat remarked to him, that he, witness, thought the Meteor was bound for Chile; that Forbes said she will clear for Panama; that witness told Forbes in a loud voice he expected to have had command of her, and take her to Chile, and Forbes told witness he ought not to talk so loud about such matters in so public a place (pp. 256–257); that on the same afternoon, witness, in company with Wright, saw Rogers; said to him he thought the Meteor "was off for Chile;" that Rogers remarked:

"*Mackenna had done the business through other brokers, and thought he had a good bargain in the Meteor because they had got* 750 *tons of coal in the contract*" (p. 258); that Rogers said the ship was "to go to Panama, and there be turned over and change command, I think he said to Williams" (p. 260); that witness called to see Mackenna on Monday preceding her seizure, and told him he saw the Meteor was off for Chile; that he had expected to command her, but saw no Union officer had any chance with him;

that Mackenna said: "Wait, wait, there may be an opportunity for you yet" (p. 262); that he knows Captain Kemble of the Meteor; that, before the seizure of the ship, he had conversation with Kemble, about her destination; that Kemble said: "if Chilian agents bought her he would take her out and deliver her to other parties; to some fighting Captain" (p. 263).

Daniel I. Hunter testified, that he was employed by Mackenna as translator; that he lived in the house with him; that he knows the Chilean Minister; Rogers the Consul, Captain Kemble of the Meteor, and a Captain Wilson of the Chilean Navy; that he had seen all these persons at Mackenna's house in New York; that he had heard conversations between Mackenna, and Captain Wilson, about fitting out privateers against Spain; could not say when, or how many times, he had heard the subject discussed; *that he had heard the subject of the purchase of the Meteor discussed by Mackenna and Wilson* (p. 153); that witness had been on board the Meteor accompanied by Chileans several times; that he there met Kemble, Captain of the Meteor (p. 156); that he saw Captain Kemble at Mackenna's house twice before the seizure of the Meteor; that Kemble saw Mackenna; that Kemble remained there an hour or so, each time (p. 158); cannot recollect any of the conversation that was had by Mackenna and Kemble on those occasions (p. 159); that after Mackenna's arrival in New York he saw Asta Buruaga at his house several times; that he was present at interviews between Mackenna and Asta Buruaga and did not hear conversation about privateers (p. 160); that he has seen Rogers at Mackenna's house on a great many occasions, and has heard the subject of privateers discussed "in a general way" (p. 161); that he has heard conversations between them about the Meteor; that he became acquainted with Mackenna in Chile, before war was declared.

George M. Ramsay testified that he made the contract with Mackenna for Torpedo boats, Exhibit L (p. 310); that

the certificate annexed to the contract of Rogers was furnished to witness by Rogers.

James R. Ford testified that on the 18th day of January he received in his warehouses from Cary & Co. two Parrott guns, with appurtenances, and ammunition from the Meteor (p. 116). This was more than one month after Wright had informed Rogers an armed vessel could not clear (see Wright's testimony), and only three days before the Meteor applied at the Custom House for her clearance.

William Jarvis testified that he was Marshal's officer; that he took possession of the Meteor on the 23d January, 1866, at about one o'clock, P. M.; that at the time he went on board steam was up, and Mr. R. B. Forbes was on board; that Mr. Forbes said he had expected to accompany the vessel to the Narrows; that Forbes had a travelling bag with him; that at this time the Captain was not on board, but that he served a notice of seizure on the Mate (p. 103).

Thomas H. Sease testified he was appointed shipkeeper by the Marshal; went on board the day of seizure; that, on the 2d day of February, he saw on board the Meteor 5½ boxes of shot for cannon, which Captain Kemble asked his permission to land, and, when it was refused, asked witness to say nothing about his request (p. 104).

Lewis J. Kirk testified that he was an Inspector of Customs, and, on the day preceding the seizure of the Meteor, he went on board by direction of the Surveyor of the Port; that he saw the first mate Betts, who told him "*he had shipped for one year, but expected to be in New York in three months;*" that he examined the cargo book, and found the vessel had no merchandise on board, only coal and stores; that a portion of the stores were marked "reserved stores" (pp. 112–113).

The manifest produced to the collector of customs by Captain Kemble on the 22d January 1866, on application for clearance, describes only "fuel and stores." Its correctness

was sworn to by Kemble on that day. The voyage was described as to Panama.

The Court cannot fail to see how inexorably this testimony brings the Meteor within the circle of the denunciations of the legislation of 1818. It discloses two high contracting parties, "concerned" in furnishing or fitting out that vessel; the owners or agents of the ship, on the one side, and the Chilean Government, its Minister, confidential agent, consul, or unofficial agents, on the other side. The Consul cannot and will not deny, that he held out Byron, McNichol, and Conklin to be his agents, acting on behalf of Chile. Wright, by his evidence, leaves no doubt on that point. And if the Court is satisfied that all parties were so "concerned" in furnishing or fitting out the Meteor, it can and will have no difficulty in finding the necessary *intent.*

It needs only to make such a review of the evidence as I have just given, to see how entirely unjust was the effort of the counsel for the claimants, to characterize the Government witnesses as a parcel of irresponsible "intermeddlers." Was Jerome,—a part owner in the vessel to the extent of thirty thousand dollars,—an "intermeddler," when he made an agreement with the Chilean Minister to go on board the vessel, some four or five months ago, with the view of inducing him, or his Government, to purchase her? Is there any possible legal question as to the admissibility of his testimony? Is there any suggestion that it is hearsay, secondary, or immaterial? Four or five months ago carries us back to November, 1865, and war, between Spain and Chile, was declared September 25, 1865. What was the motive of Mr. Jerome in making an appointment with the Chilean Minister to go to Jersey City and inspect the ship? I pray your Honor to reflect upon this, when you shall come to consider whether any of the owners of the Meteor were knowingly concerned in affording her to the Chilean Government, with knowledge, or intent, that she was to be used in the hostilities between that Government and Spain. I take it that

if we had no other testimony of the relation of the owners, to the voyage which this vessel was about entering upon, when she was seized, this evidence of Jerome alone would be sufficient to create the *strong suspicion* recognized by the Supreme Court in the slaver cases.

The Court. My impression, although I have taken no notes of the testimony, as I rely upon the report of the shorthand writer, is, that Mr. Jerome said that he had no conversation with the Chilean Minister at that time, about purchasing the vessel.

Mr. Choate. And he stated at that time, also, that the Chilean Minister had no authority to buy the vessel.

Mr. Webster. I will refer to the shorthand writer's report. I do not think it possible that I am in error. The testimony of Mr. Jerome is to be found on page 319. The stenographer's report reads as follows:

Q. Have you ever been on board the Meteor? A. Yes, sir.
Q. When were you on board of her last? A. I never was on board but once.
Q. When was that? A. Some four or five months ago.
Q. In whose company were you at that time? A. Mr. Asta Buruaga's, the Chilean Minister; I think no one else.
Q. Was Mr. R. B. Forbes along at that time? A. I think not.
Q. What is your best impression? A. My best impression is that he was not; I am quite sure he was not.
Q. Where was the vessel lying at that time? A. At Jersey City.
Q. Did you and the Chilean minister go together to visit her? A. No, I think not; I think I met him there.
Q. By agreement? A. Yes.
Q. What was the agreement you made with him by which you met him there? A. I asked him to look at the ship.
Q. For what purpose? A. To see if he would buy her.
Q. And did he look at the ship? A. He did.
Q. Did you and he examine the ship together on that occasion? A. We went through her partially, not much.

Mr. Choate. He further stated that he supposed the Chilean Minister himself had no authority then to complete the negotiation. We find that there was no negotiation between him and the Chilean Minister for purchase and sale.

Mr. Webster. We need not dispute here about that. The point upon which I am now addressing the Court is,

that Mr. Jerome desired to sell the Meteor to the Chilean Government, and offered her to its control for money.

Mr. Choate. He wished to sell her.

Mr. Webster. To the Chilean Government; or else, why did he solicit the Chilean Minister to go on board her. He admits that he made an agreement. He is then asked, in his direct examination, "for what purpose," and he replied, "to see if he would buy her." It is true, as I have already stated, that in the subsequent examination of Mr. Jerome, he seemed to desire to modify his previous statement, and opportunity was given to him. But his explanation did not vary or affect the fact that he desired to place the Meteor at the disposal of Chile. In order that there may be no misunderstanding upon this point, let me re-read the explanation of Mr. Jerome, taken from the shorthand writer's report, page 319. Here it is:

Q. Do you desire to change your testimony in that respect, or is it correct? A. Not exactly; I am recorded there as saying that I asked him there to see if he would buy her.

Q. In what particular is your testimony incorrect? A. I could not expect him to buy her, because he had no power to buy her, as I understood; the ship was for sale, and I wanted him to look at her; perhaps he might recommend her.

Q. You say you did not expect him to buy her? A. No, sir.

Q. Because he had not the authority to buy her? A. No.

Q. Who did you suppose had the authority to buy her? A. I did not suppose any one had at that time; I thought the occasion might turn up.

Q. How did you know he had not authority to buy her? A. I did not know.

Q. What did you mean when you said you did not suppose he had authority to buy her? A. I simply did not suppose he had.

Q. Who did you suppose had? A. I did not suppose any one had.

Q. Why, then, did you ask the Chilean Minister to look at the ship? A. Well, I thought the occasion might turn up that he might want to buy her.

Now, if the Court please, this agreement, appointment, interview, and visit to the Meteor, in which Mr. Jerome and the Chilean Minister were concerned, were the inception and beginning of an affair which culminated in an illegal transaction.

The Court. I had been under the impression that

Jerome characterized that interview as only a casual one.

Mr. Choate. Jerome, like Low, testified that he had given over all control of the sale of the ship to Mr. Forbes, and did not claim to have power to sell her.

Mr. Webster. But we see that the testimony fixes beyond dispute, that the meeting was not casual, or accidental, but a well-defined and clearly intended agreement, and whether Jerome had, or had not, the power to complete the transfer, he, at least, tells the Court when the negotiation for furnishing and fitting out this vessel, in the interest of Chile against Spain, really began. If any faith can be put in human testimony, Jerome solicited the Chilean Minister to inspect the Meteor, to see if, at some time, his Government would not buy her. Forbes said, in his letter of September, 1865, that the Meteor was for sale, but "I cannot name a price until I consult the other owners. I am open to an offer." At, or about that time, Jerome makes an appointment with the Chilean Minister, in respect to this vessel, which had no regular occupation, and which was up for "Cowes and a market."

But I began my allusion to the testimony of Jerome, chiefly to repel the suggestion of the other side, that the Government had introduced no witnesses but "intermeddlers."

Again; your Honor will remember that when Cary came to Wright's office, and demanded to know who were his principals, and Wright replied, the Chilean Government; Cary then said, that he had already been in treaty for affording to that Government the Meteor, and it had no money.

Mr. Choate. His language was that he had made an offer. "Treaty," is the word of counsel.

Mr Webster. Well, let us refer to the shor hand writer's report again, to settle this point. I read from page 117, of Wright's Direct Examination:

Q. Do you recollect anything more of that interview with Mr. Cary? A. No, sir.

Q. Was anything said by him at the interview with you to the effect, or in substance, that he had already had negotiations for the sale of the Meteor to the Chilean Government? [Objected to by claimant's counsel.]

The Court. Ask what conversation he had. A. As I have said, at that time he said he had already been in *treaty* with them, and they had no money.

Therefore the Court will perceive that "treaty" is not the word of counsel but is the word of the witness in reply to a question put by the Court.

Mr. Choate. Wright said, "as I have said before." And what he had said before was, that he had an application of that kind before, and they had no money.

Mr. Webster. That is not the language of the record, and, besides, it is clear that Mr. Cary could not have gone far in these endeavors to sell the Meteor to the Chilean Government, without coming to what, in such business, is properly characterized as a negotiation or treaty.

Now, put these things together; and see what we have. Forbes states, in September, 1865, that the vessel is for sale. Jerome, in September, 1865, solicited the Chilean Minister to go to Jersey City and examine her. Cary, in December, 1865, admitted that, previous to that time, he had been in actual treaty, or negotiation, to place her at the disposal of the Chilean Government. I submit to your Honor that, upon the testimony of Cary alone, there is evidence of such a palpable violation of the neutrality act, as subjects this ship to forfeiture. Her owners confess that they have offered to furnish this formidable war-vessel to one belligerent, under circumstances which preclude the possibility that they could have been ignorant of the use to which that belligerent intended to put her. When Wright informed Cary that it was the Chilean Government for whom he was acting as agent, did Cary suggest the unlawfulness of such a negotiation? No, nothing of the kind! The only point of difficulty he suggested, was the want of cash funds. Violation of law did not seem to enter into his thought, or comprehen-

sion. More than that, Cary subsequently returned to Wright's office to see if arrangements had been completed by the Chilean agents for raising the necessary funds.

Again; your Honor will remember that Wright, in one of his earliest interviews with Rogers, in respect to the Meteor, expressed to the latter, doubt as to whether Chilean agents could get the Meteor out of this port. Wright knew that the Meteor was a war-vessel, and he knew she was an armed vessel, because he had seen two Parrott guns on board. He knew (which the learned counsel for the claimants affects not to know) of the restraints which the act of 1818 places upon warlike vessels, and especially upon vessels actually armed. Bring that piece of testimony side by side with the other fact, that three days before the Meteor applied for her clearance these two guns were taken off and stored in a warehouse near by. Is not this incident of itself sufficient to make strong suspicion of the illegality of the voyage? If it be that the Meteor was bound for China, as has been vaguely suggested by counsel, then it is clear that she was bound for a locality where her guns would be wanted, if guns are ever needed in the merchant service.

Again, if the Meteor was going on a voyage of pure commercial adventure, and to find a market to sell herself, it seems very clear that she would have taken on board all the apparel and furniture which really belonged to her. But the truth and fact are that, the illegal voyage having been determined on, these guns were taken off, in order to remove objects so prominent that the Government would not fail to fasten suspicion thereon. And here the Court will observe that we are dealing, not with "intermeddlers," but with the recognized agents of the vessel.

Once more, Hunter, the translator and secretary of Mackenna, the confidential agent in New York, testified that Kemble, the captain of the Meteor, was in the habit of visiting Mackenna's headquarters before the seizure was made. Is there any explanation of such visits offered by the

claimants? Captain Kemble has been here in court every day of the trial, sitting near the learned counsel, accessible to him, and yet they do not venture to put him upon the witness-stand, to give the Court any proper reason for this intercourse by an American sea-captain with the confidential agent of a foreign Government, and this confidential agent proved, by the evidence in this case, to have been guilty of the atrocious crime of organizing and setting on foot, within the jurisdiction of the United States, a fleet of gunboats, under a contract with the provider of these formidable instruments, to blow up with torpedoes, public armed vessels, of the Spanish Navy, and all on board. Can it be said that this incident of the repeated visits of the captain of the Meteor, to the house of the confidential agent of Chile, in this city, is of no consequence, when taken with the other proved fact, that the same captain told Nichols,—a witness, unimpeached and unimpeachable,—that if the Meteor was disposed of to Chile, he (Kemble) should take her out, and deliver her over to a fighting captain? Are there any "intermeddlers" in this branch of the case? In a word, up to this point have we not been dealing exclusively with the owners or recognized agents of the Meteor?

The conversation of Captain Nichols with Captain R. B. Forbes is, under the circumstances, something more than a mere casual affair. The Court will remember that Captain Nichols testified that he said to Forbes on the ferryboat that he saw the Meteor was off for Chile, and that Forbes made no reply, but cautioned him not to speak so loud about such a matter in so public a place. This incident becomes, of course, important or unimportant, by reason of its association with other facts, and, taking the evidence in this case as a body, no one can safely say that it does not aid in coming to a correct conclusion as to the voyage on which the Meteor was then about to enter. Thus much for the owners of the vessel, and her agents.

When we, in turn, come to look at the acts of the officials

of the Chilean Government, we find a state of things which irresistibly impels to the conclusion that this vessel has been placed within the denunciations of the third section of the Act of 1818. The Court will remember that, on Friday before the seizure of the Meteor, Rogers said that she was to go to Panama, there to be turned over, and change hands. Remember this statement from Rogers does not come from an "intermeddler," but from the recognized official representative of the Government of Chile, in this port,—an officer charged with special functions and duties, and permitted by our Government to have privileges in the United States,—privileges which are always faithfully recognized in this court. Rogers stated that, although he had nothing to do with the final consummation, he believed Mackenna had done the business, and that he thought the arrangement a good one, because it included seven hundred and fifty tons of coal. Now, will somebody tell me, if the Chilean Government be not a party to the furnishing and fitting out the Meteor, with seven hundred and fifty tons of coal, an article now recognized as contraband of war, how did it happen that on Friday, the Chilean consul knew all about it, and about the vessel, even to her day of sailing? Remember, I repeat, this is not a statement of Byron, or McNichol, or Conklin, or any of the men whom my learned friend stigmatizes as "intermeddlers," but of a man accredited by the Chilean Government to this country as consul. On Saturday, the next day, Rogers called on McNichol, and told him, in substance, that the procurement of the Meteor was settled upon; that she was going to clear for Panama. And on Monday morning, Rogers called again, and said the Meteor would clear that day, and it was the very day she did attempt to clear, and on the next day she was seized by a mandate of this court. As I have said before, there is no attempt on the part of the claimants to impeach these witnesses; no attempt to show they are not men of character; no effort to satisfy your Honor that they are not, in every respect, as worthy of be-

lief as Messrs. Forbes, or Mr. Low, or Mr. Jerome. Our witnesses have been subjected to a cross examination, as severe and adroit as witnesses ever endured. Their history, business, place of residence, everything concerning their interior life, has been gone into at length. How did they bear the ordeal? Was there one incident, from beginning to end, which tended, in your Honor's judgment, to impair confidence in these witnesses?

I watched with great interest, during the three days of the argument of my friend in behalf of the claimants, to see if he would venture to present to your Honor any theory, as to what kind of a voyage the Meteor was entering upon when arrested. For the first two days of the argument, he kept clear of any such explanation. He gave that branch of the subject a very wide berth. He, to be sure, expounded, with great unction, certain theories of law, but failed utterly to put his case in a condition to get the benefit of his theories, except in the last day of his argument, when he spent considerable time in insisting that the Messrs. Forbes had a *right* to sell the Meteor to Chile. It is not readily to be perceived what necessity there was for any such line of argument, if the fact be that the Meteor was on a commercial voyage to China, or elsewhere, and had no possible relation to the Chilean Government, or to the Chilean service. The Messrs. Forbes, he claimed, in all their arrangements with Chile, in respect to the Meteor, had done nothing but what they had a perfect right to do. Here again, I respectfully submit, we have, in the confession of the learned counsel, a very important piece of evidence, which does not come from an "intermeddler."

My friend endeavored to create much smoke and confusion out of the fact that Conklin, Wright, and Rogers had conversation about funds with which to pay for the Meteor. The explanation of this is very simple. Rogers told Wright that the confidential agent had not arrived, but that he was expected soon, and would have, or would be

able to make arrangements for funds. In the mean time, says Rogers, Chile needs armed vessels, and if some one can be found who will advance money upon Chilean drafts on the Government at Santiago, the exit of vessels will be very much facilitated. That was what these conspirators in behalf of Chile were doing when they applied to Messrs. Sackett, Belcher & Co. to advance the money. This is a very common transaction, and such an one as our own Minister, for example, may very likely have had occasion, at some time, to make in London, or elsewhere, and it is clear, upon the evidence, that the Chilean agents were willing to pay a very large *bonus* to any one who thought enough of Chilean securities, drawn by the Minister in this country, to advance money upon them.

The excellent deportment and bearing of the Government witnesses upon the stand cannot have escaped the attention of the Court. They were careful and cautious in all their statements, and evidently had an honest purpose to keep within the bounds of strict truth. In fact, Wright was so reserved, and so apparently careful not to say any more than was necessary against the Meteor, that he might well enough have created the impression in the court room, that he was more favorable to the Messrs. Forbes, and more in their interest than in the interest of the United States.

The last point made by the counsel on the other side, in his very able and instructive argument—instructive, I am free to say, both to us who are opposed, as it doubtless was to those who sympathized with the views he elaborated—and one which he urged upon your Honor quite at length, and with much fervor, was that his clients represented in this case the freedom of commerce. We do not take that view. It occurred to me, while the counsel was addressing your Honor so eloquently on this point, that somewhat such a claim and such an argument was without doubt used by the claimants in the trial of the Alexandra, and in Parliament by the friends of Messrs. Laird, to vindi-

cate their action. Upon our theory of the case, if Messrs. Forbes are vindicators in this matter of the freedom of commerce, then the Messrs. Laird of Liverpool occupied that position. The latter undertook to sell to Confederate agents unarmed vessels. That fact, and the failure of the English Government to stop the business, roused for two years in the United States an amount of denunciation, of criticism of the Queen, her government, her law-officers, and the jurisprudence of England, such as, I venture to say, has never, in the history of nations, been meted out by one nation to another, with whom it professed relations of amity. Did any one suggest, during those two years, in the United States, that the Messrs. Laird represented the freedom of commerce? We thought the only *freedom* they represented, when they fitted out these cruisers, was the freedom to sink unarmed merchantmen and whalers to the bottomless depths, and to indulge the pitiable, contemptible purpose, for brave men, of destroying the results of the hard-earned industry of the toiling fishermen of New Bedford. That is the "freedom of commerce" which the Messrs. Laird represented in selling the Alabama, and others represented in affording the Tallahassee to Confederate agents in Liverpool. If our theory of the case be correct, the Messrs. Forbes occupy to the Chilean Government the same attitude in the sale of the Meteor, that the Messrs. Laird occupied to the Confederates in the sale of the armed rovers of the sea. No, if your Honor please, there is no freedom of commerce about it! There is not an honest shipowner, or an honest mercantile firm in this city, or in Boston, engaged in legitimate business, who has any desire that Messrs. Forbes should furnish to, or fit out this ship for Chile, to be used as a privateer against Spain. On the contrary, they wish the Government to repress, if need be with a strong hand, every effort, no matter from whence it comes, of persons in the United States, who, having a ship which cannot be used in lawful commerce, seek to use it against the interest of neutrality.

This case, with all its far-reaching relations, international and municipal, is now committed to the determination of the Court. If I had failed to remember that I was addressing a magistrate who, by long years of judicial labor, had become practised in the examination of oral or written testimony, and whose instinctive perception of what is admissible or inadmissible, pertinent or impertinent, material or immaterial, made the exposition of counsel thereon quite unnecessary, I might have dwelt upon the evidence more at length. But what would be proper under other circumstances, or before a jury, would be improper here. I, therefore, now withdraw myself from the cause, on submitting but this final thought.

The highest and holiest duties, which can be imposed upon a government, are the preservation of its own existence, and thereby, the protection of the life, liberty, property, and happiness of its people. The discharge of these high functions belongs, primarily, in the United States, to the legislative and executive departments of the Government, and if it be neglected or omitted, the fearful responsibility rests with those departments. But, on the other hand, it would be in vain—worse than in vain, it would be delusive—to enact wise and wholesome laws, designed to supplement the recognized jurisprudence of nations, and thus avert those acts of war, which threaten national life, unless those laws are enforced by the judicial tribunals of the land, in the spirit which inspired their enactment.