



SUPPLEMENT

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Foreign Office, October 10, 1865.

THE following correspondence has passed between Mr. Adams, the United States Minister at this Court, and Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs:

Non-Illegible text

Mr. Adams to Earl Russell.—(Received April 8.)

Legation of the United States, London, April 7, 1865.

My Lord,  
I HAVE the honour to transmit to you a copy of a letter addressed to the Secretary of State at Washington by the Consul of the United States at Rio Janeiro, Mr. Monroe, making a report of the depredations committed upon the commerce of the United States by the vessel known in the port of London as the "Sea King," but since transformed into the "Shenandoah" by a process already fully explained in a note which I had the honour to address to your Lordship on the 18th November last.

I regret to be obliged to add that this same vessel has been, since the date of Mr. Monroe's letter, heard of at Melbourne, from which place further details of similar outrages have been received. The particulars have been communicated to my Government, but there has not yet been sufficient time for me to obtain its instructions in regard to them. I cannot doubt, however, that they will be the same in substance as those embraced in the last despatch.

Were there any reasons to believe that the operations carried on in the ports of Her Majesty's Kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented, I should not be under the painful necessity of announcing to your Lordship the fact that my Government cannot avoid entailing upon the Government of Great Britain the responsibility for this damage. It is impossible to be insensible to the injury that may yet be impending from the part which the British

steamer "City of Richmond" has had in being suffered to transport with impunity from the port of London men and supplies, to place them on board of the French-built steam-ram "Olinthe," alias "Stoerkodder," alias "Stonewall," which has through a continuously fraudulent process succeeded in deluding several Governments of Europe, and in escaping from this hemisphere on its errand of mischief in the other.

I am by no means insensible to the efforts which have already been made, and are yet making, by Her Majesty's Government to put a stop to such outrages in this kingdom and its dependencies. Neither can I permit myself to doubt the favourable disposition of her Ministers to maintain amicable relations with the Government which I represent.

Whilst perfectly ready to bear testimony to the promptness with which all the numerous remonstrances and representations which it has been my painful duty heretofore to submit have been met and attended to by your Lordship, it is, at the same time impossible for me to dispute the fact that the hostile policy which it is the object of all this labour to prevent has not only not been checked, but is even now going into execution with more and more complete success.

That policy, I trust I need not point out to your Lordship, is substantially the destruction of the whole mercantile navigation belonging to the people of the United States. The nature of the process by which this is coming about may readily be appreciated by a brief examination of the Returns of the registered tonnage of Her Majesty's Kingdom for the last six years. I have the honour to append to this note a tabular statement of the number of merchant-ships built, and of the tonnage owned in the United States, which have been transferred to British owners in the successive years beginning with 1858 and ending in 1864, so far as the materials at hand from the official reports of the two Governments can supply the information.

I trust that it will be needless for me to do more than to point out to your Lordship the inference

deducible from this statement, to wit:—That the United States' commerce is rapidly vanishing from the face of the ocean, and that that of Great Britain is multiplying in nearly the same ratio. Furthermore, it is my painful duty to suggest that this process is going on by reason of the action of British subjects, in co-operation with emissaries of the insurgents, who have supplied from the ports of Her Majesty's Kingdom all the materials, such as vessels, armament, supplies, and men, indispensable to the effective prosecution of this result on the ocean. So far as I am aware, not a single vessel has been engaged in these depredations excepting such as have been so furnished. Unless, indeed, I might except one or two passenger steamers belonging to persons in New York, forcibly taken possession of whilst at Charleston in the beginning of the war, feebly armed and very quickly rendered useless for any aggressive purpose. It may then, on the face of this evidence, be fairly assumed as true that Great Britain, as a national Power, is in point of fact fast acquiring the entire maritime commerce of the United States by reason of the acts of a portion of Her Majesty's subjects engaged in carrying on war against them on the ocean during a time of peace between the two countries. I deeply regret to be constrained to add that every well-meant effort of Her Majesty's Government to put a stop to this extraordinary state of things down to this time has proved almost entirely fruitless.

I would most respectfully invite your Lordship to produce in the history of the world a parallel case to this of endurance of one nation of injury done to it by another, without bringing on the gravest of complications. That in this case no such event has followed, has been owing, in the main, to a full conviction that Her Majesty's Government has never been animated by any aggressive disposition towards the United States; but, on the contrary, that it has steadily endeavoured to discountenance and, in a measure, to check the injurious and malevolent operations of many of her subjects. But whilst anxious to do full justice to the amicable intentions of Her Majesty's Ministers, and on that account to forbear from recourse to any but the most friendly and earnest appeals to reason and to their sense of justice for the rectification of these wrongs, it is impossible to resist the conviction that heretofore their measures, however well intended, have never proved effective to remedy the evil complained of. Prompt to acquit them of any design, I am reluctantly compelled to acknowledge the belief that practically this evil had its origin in the first step taken, which never can be regarded by my Government in any other light than as precipitate, of acknowledging persons as a belligerent Power on the ocean before they had a single vessel of their own to show floating upon it. The result of that proceeding has been that the Power in question, so far as it can be entitled to the name of a belligerent on the ocean at all, was actually created in consequence of the recognition, and not before; and all that it has subsequently attained of such a position has been through the labour of the subjects of the very country which gave it the shelter of that title in advance. Neither is the whole case stated even now. The results equally show that the ability to continue these operations with success during the whole term of four years that the war has continued, has been exclusively owing to the opportunity to make use of this granted right of a belligerent in the Courts and the ports and harbours of the very power that furnished the

elements of its existence in the outset. In other words, the Kingdom of Great Britain cannot but be regarded by the Government I have the honour to represent as not only having given birth to this naval belligerent, but also as having nursed and maintained it to the present hour.

In view of all these circumstances I am instructed, whilst insisting on the protest heretofore solemnly entered against that proceeding, further respectfully to represent to your Lordship that, in the opinion of my Government, the grounds on which Her Majesty's Government have rested their defence against the responsibility incurred in the manner hereinbefore stated, for the evils that have followed, however strong they might have heretofore been considered, have now failed by a practical reduction of all the ports heretofore temporarily held by the insurgents. Hence the President looks with confidence to Her Majesty's Government for an early and an effectual removal of all existing causes of complaint on this score whereby the foreign commerce of the United States may be again placed in a situation to enjoy the rights to which it is entitled on the ocean in peace and safety, free from annoyance from the injurious acts of any of Her Majesty's subjects, perpetrated under the semblance of belligerent rights.

I am further instructed to invite the attention of your Lordship to another subject in this immediate connection. From the beginning of this war the armed vessels of Her Majesty have continued to enjoy full and free pratique in the waters of the United States. They have been welcomed in just the same friendly manner as has been heretofore customary when there was no exclusion of the same class of ships of the United States from the waters of Great Britain. It is the opinion of the President that the time has come when it may be asked, not only with strict right, but also with entire comity, when the reciprocity in these hospitalities is to be restored. It is the expectation that the naval-force of the United States in European waters will be augmented on or about the beginning of next month, when this question may become one of some interest, I am therefore directed to solicit information from your Lordship as to the reception which those vessels may expect in the ports of this kingdom.

I pray, &c.

(Signed) CHARLES FRANCIS ADAMS.

Inclosure 1 in No. 1.

*Mr. Monroe to Mr. Seward.*

Consulate of the United States, Rio de Janeiro, November 29, 1864.

SIR,  
I AM pained to be compelled to report to the Department that a new piratical steamer called the "Shenandoah," commanded by James W. Waddell, is engaged in destroying our merchant vessels near the Equator, on the highway of communication between the United States and the ports of South America. The facts presented below were obtained in part from protests recorded at this office by the masters of the "Alina" and the "D. Godfrey," and in part from statements published in the Brazilian newspapers, and believed to be reliable.

The barque "Alina," Staples master, of 573 tons burden, sailed from Newport, England, on the 6th October, with a cargo of railroad iron, bound for Buenos Ayres. Having reached latitude 16° 40' north and longitude 26° 45' west, she was captured and sunk on the 29th October by the

"Shenandoah." The schooner "Charter Oak," from Boston, bound for San Francisco, was captured and destroyed by the same pirate on the 5th of November in latitude 7° north, longitude 27° 3' west.

On the 7th November the barque "D. Godfroy," Hallett master, from Boston, of 300 tons burden, bound for Valparaiso with general cargo, was captured and burnt by the "Shenandoah," in latitude 6° 25' north and longitude 27° 15' west. On the 10th of November, in latitude 4° 30' north and longitude 26° 40' west, the brig "Susan," of New York, bound from Cardiff to Rio Grande, was also destroyed by the same steamer.

On the 12th November the "Shenandoah" captured the ship "Kate Prince," of 995 tons burden, Libbey master. The "Kate Prince" belongs in Portsmouth, New Hampshire, and was on her passage from Cardiff to Bahia with a cargo of coal. She was captured in latitude 2° 30' north and longitude 28° 30' west, and having been compelled to give bonds in the sum of 40,000 dollars, was allowed to continue her voyage. These five vessels were all American. The officers and crews were at first transferred to the "Shenandoah;" afterwards, as opportunity offered, a part were sent to Bahia on the "Kate Prince," a part to this port on the Danish brig "Anna Jans," from New York, and the rest, so far as heard from, had been retained on the "Shenandoah;" of these last, some by threats and promises had been induced to engage in the piratical service.

In another instance a vessel not under our flag narrowly escaped destruction. The Argentine barque "Adelaide," Williams master, bound from Baltimore to this city, was boarded by officers of the "Shenandoah" on the 12th November in latitude 1° 46' and longitude 29° west. The "Adelaide" was consigned to Phipps, Brothers, and Co., of this city. It was at first decided to burn her, and straw and tar had been brought for this object: this purpose, however, was finally abandoned, and the pirates after having opened letters, destroyed furniture, and committed other outrages,

retired on board the "Shenandoah," carrying a part of the provisions of the barque with them. Captain Williams states that the commander of the "Shenandoah" declared he would hereafter burn all cargoes belonging to American owners, by whatever flag they might be covered.

The following statement in regard to the "Shenandoah" is made by ship-masters who have been prisoners on board of her:—

"The 'Shenandoah' is a steamship of 1,100 tons burden and 250 horse-power. She carries a battery of four 68-pounders and two 12-pounders, all smooth-bore, and two 32-pounders, rifled.

"She was formerly called the 'Sea King,' and belonged to the Steam Company trading between London and Bombay and Calcutta. She was built by Stevens and Sons, of Glasgow, in 1863, and makes eleven miles an hour. She has forty-three men, nearly all English, besides the officers. She cleared from London for Bombay in September of this year."

On the 27th instant the "Alina Jans" brought into this port the following officers and seamen of the "Alina" and "D. Godfroy," who, being in a very destitute condition, applied to this Consulate for assistance:—

From the "Alina."—Everett Staples, master; J. F. Peterson, first officer; M. H. Staples, second officer; G. A. Stinson, seaman.

From the "D. Godfroy."—Samuel W. Hallett, master; R. L. Taylor, first officer; Chas. F. Brown, second officer; Joseph James, seaman.

I offered assistance to the officers simply as seamen, in accordance with section 211 of my instructions.

As this despatch will be retained until the sailing of the English packet on the 9th of December, it will be supplemented by any further information which I may obtain in regard to the movements of the "Shenandoah."

I have, &c.

(Signed) JAMES MONROE.

P.S., December 8.—I have no further information in regard to the "Shenandoah." J. M.

Inclosure 2 in No. I.

STATEMENT of American Vessels sold to British Subjects, from 1858 to 1864, inclusive.

Year.	UNITED STATES' OFFICIAL REPORT.		BRITISH OFFICIAL REPORT.	
	Number of Vessels.	Tonnage.	Number of Vessels.	Tonnage.
<i>Before the War.</i>				
1858	33	12,684	—	—
1859	49	21,308	—	—
1860	41	13,683	Not given.	11,716
	123	47,675	...	11,716
<i>During the War.</i>				
1861	126	71,673	Not given.	66,757
1862	135	64,578	"	59,103
1863	348	252,379	608	328,665
1864	106	92,052	—	—
	715	480,682	608	454,525

No. 2.

*Earl Russell to Mr. Adams.*

Sir,

*Foreign Office, May 4, 1865.*

I HAVE had the honour to receive your note of the 7th April, forwarding a copy of a letter addressed by the Consul of the United States at Rio de Janeiro to his Government, upon the proceedings of a vessel called the "Sea King," or "Shenandoah," which vessel you state has since been heard of at Melbourne, whence details have been received of outrages committed by her on the commerce of the United States. You then proceed to say, "Were there any reasons to believe that the operations carried on in the ports of Her Majesty's kingdom and its dependencies to maintain and extend this systematic depredation upon the commerce of a friendly people had been materially relaxed or prevented," you would not to have had to announce to me "the fact that your Government cannot avoid entailing upon the Government of Great Britain the responsibility for this damage."

A British steamer, the "City of Richmond," is next alluded to as having been allowed to take supplies from the port of London, and to place them on board a French-built steam-ram, known as the "Stonewall," and you found, upon the circumstances to which you have thus alluded, a charge against Great Britain, of not only not checking improper depredations on United States' commerce, but of aiming at the destruction of the whole mercantile navigation belonging to the people of the United States; and while giving credit to Her Majesty's Government for endeavouring to check illicit proceedings of British subjects, you allege that the measures adopted in this respect by Her Majesty's Government have never proved effective, and that the evil of which you complain has its origin in the fact that Her Majesty's Government recognized the persons in arms against the United States as belligerents, and thereby improperly gave them a status which has led to a long continuance of hostilities; but as the ports held by them have fallen into the power of the United States, the President looked with confidence to a removal by Her Majesty's Government of this ground of complaint.

You conclude by expressing a hope that the ships of war of the United States will be welcomed in British waters in the same friendly manner as has been heretofore customary.

Allow me to observe, in the first place, that I can never admit that the duties of Great Britain towards the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. The question is not what losses the United States have sustained by the war, but whether in difficult and extraordinary circumstances the Government of Her Majesty have performed faithfully and honestly the duties which international law and their own municipal law imposed upon them.

Let me remind you that when the civil war in America broke out so suddenly, so violently, and so extensively, that event, in the preparation of which Great Britain had no share, caused nothing but detriment and injury to Her Majesty's subjects. Great Britain had previously carried on a large commerce with the Southern States of the Union, and had procured there the staple which furnished materials for the industry of millions of her people.

Had there been no war the existing Treaties with the United States would have secured the continuance of a commerce mutually advantageous and desirable. But what was the first act of the President of the United States? He proclaimed on

the 19th of April, 1861, the blockade of the ports of seven States of the Union. But he could lawfully interrupt the trade of neutrals with the Southern States upon one ground only, namely, that the Southern States were carrying on war against the Government of the United States; in other words, that they were belligerents.

Her Majesty's Government, on hearing of these events, had only two courses to pursue, namely, that of acknowledging the blockade, and proclaiming the neutrality of Her Majesty, or that of refusing to acknowledge the blockade, and insisting upon the rights of Her Majesty's subjects to trade with the ports of the South.

Her Majesty's Government pursued the former course as at once the most just and the most friendly to the United States.

It is obvious, indeed, that the course of treating the vessels of the Southern States as piratical vessels, and their crews as pirates, would have been to renounce the character of neutrals, and to take part in the war. Nay, it would have been doing more than the United States themselves, who have never treated the prisoners they have made, either by land or sea, as rebels and pirates, but as prisoners of war, to be detained until regularly exchanged.

So much as to the step which you say your Government can never regard "as otherwise than precipitate" of acknowledging the Southern States as belligerents.

It was, on the contrary, your own Government which, in assuming the belligerent right of blockade, recognized the Southern States as belligerents. Had they not been belligerents, the armed ships of the United States would have had no right to stop a single British ship upon the high seas.

The next complaint (often repeated, I must admit), is, that vessels built in British ports, and afterwards equipped with an armament sent from the British coast, have injured, and, according to your account, almost destroyed the mercantile marine of the United States.

Now, the only question that can be put on this subject is, whether Great Britain has performed faithfully the duties incumbent upon her. I must here ask you to recollect that our Foreign Enlistment Act, as well as your Foreign Enlistment Act, requires proof that the vessel has been or is about to be equipped or armed within our dominions for the purpose of assisting a State or a body of men making war on a State in amity with Her Majesty. In the case of the "Alabama," which is always referred to as affording the strongest ground of complaint against Her Majesty's Government, the papers affording evidence of a design to equip the ship for the Confederate service were furnished to me by you on the 22nd, and more completely on the 24th of July, 1862. They were reported upon by the Law Officers on the 29th of that month. But on that very morning the "Alabama" was taken to sea on the false pretence of a trial trip.

I contend that in that case, as in all others, Her Majesty's Government faithfully performed their obligations as neutrals. It must be recollected that the Foreign Enlistment Act though passed in the year 1819, had never been actually put in force, and that it is still doubtful whether the evidence furnished by you on the 22nd and 24th of July, though it was deemed a sufficient ground for detaining the "Alabama," would have been found sufficient to procure a conviction from a jury, or even a charge in favour of condemnation of the vessel from a Judge. Again, I repeat, the whole question resolves itself into this, whether the British Government faithfully and conscientiously per-

formed their duties as neutrals, or whether they, from any motives whatever, were guilty of a grave neglect of those duties.

Upon this point it might be sufficient for me to appeal to the unprejudiced judgment formed and expressed at the time by Mr. Seward, after every material fact had been communicated to him by your despatches of the 25th and 31st of July and the 1st of August, 1862.\* Writing to yourself on the 13th of August, 1863, he expressed the President's approval of the action which you had taken with respect to the "Oreto" and the "Alabama" (then called "No. 290"); and added, "You will on proper occasion make known to Earl Russell the satisfaction which the President has derived from the just and friendly proceedings and language of the British Government in regard to these subjects."

In maintaining this view of our duties, I have the satisfaction of thinking that Her Majesty's Government are supported by some of the highest authorities of the United States. In 1815 a correspondence began between the Ministers representing Spain and Portugal and the United States Government respecting the practice of fitting out privateers in the ports of the United States, and putting them under a foreign flag, and cruising against Spanish commerce. In January, 1817, Señor Onís, Spanish Minister at Washington, says:—

"It is notorious that although the speculative system of fitting out privateers and putting them under a foreign flag, one disavowed by all nations, for the purpose of destroying the Spanish commerce, has been more or less pursued in all the ports of the Union, it is more especially to those of New Orleans and Baltimore, where the greatest violations of the respect due to a friendly nation, and, if I may say so, of that due to themselves, have been committed; whole squadrons of pirates having been out from thence in violation of the solemn Treaty existing between the two nations, and bringing back to them the fruits of their piracies, without being yet checked in these courses, either by the reclamations I have made, those of His Majesty's Consuls, or the decisive and judicious orders issued by the President for that purpose."

It does not appear that any compensation was ever made for any of these seizures.

But the remonstrances of Portugal are still more applicable.

On the 8th of March, 1818, Senhor T. Correa de Serra brought to the knowledge of the United States' Government the case of three Portuguese ships which had been captured by privateers fitted out in the United States, manned by American crews, and commanded by American captains, though under insurgent colours, and he demanded satisfaction and indemnification for the injury which had been done to Portuguese subjects, as well as to the insult which had been offered to the Portuguese flag. To this letter the American Secretary of State, after reciting the complaint of the Portuguese Minister, replies as follows:—

"The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by capture over which the United States have neither control nor jurisdiction. For

such events no nation can in principle, nor does in practice, hold itself responsible." The Secretary of State who signed this despatch bore a name most honourably known in the annals of the United States, the name of Adams.

The remaining events to be noticed in the history of the answer given by the United States to the complaints of Portugal during the wars of South America, and by Great Britain to the United States in the present war, may be recorded without any fear of comparison on the part of the Government of Her Majesty.

On the 20th April, 1818, the amended Act, known as the "American Foreign Enlistment Act," was passed.

On the 24th of November of that year, the Portuguese Minister being asked by Mr. Adams to "furnish a list of the names of the persons chargeable with a violation of the laws of the United States, in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of his Sovereign, and of the witnesses by whose testimony the charge could be substantiated," replied to the following effect:—

He had found with sorrow multiplied proofs that many of the armed ships which had committed depredations on the property of Portuguese subjects were owned by citizens of the United States, had been fitted in ports of the Union, and had entered in several ports of the Union, captured ships and cargoes by unlawful means. Many of these citizens of the United States had the misfortune of believing that they did a meritorious action in supporting foreign insurrections, and offered great difficulties in the way of every prosecution instituted by a foreign minister. Prosecutions were ordered by the Government of the United States, but did not appear to have had much effect in checking the depredations complained of.

In March, 1819, the Portuguese Minister alleges that, in contrast to the Spanish insurgents who had ports and a long line of coast at their disposal, Artigas, the Chief whose flag was borne by United States' privateers, was wandering with his followers in the inland mountains of Corrientes. The "Artigan flag," he continues, "which has not a foot length of sea-shore in South America where it can show itself, is freely and frequently waving in the port of Baltimore: Artigan cockades were frequently met with in that city in the hats of American citizens unworthy of that name."

In another note dated the 23rd of November, 1819, the Portuguese Minister says, "I do justice to, and am grateful for, the proceedings of the Executive in order to put a stop to these depredations, but the evil is rather increasing. I can present to you, if required, a list of fifty Portuguese ships almost all richly laden, some of them East Indiamen, which have been taken by these people during the period of full peace. This is not the whole loss we have sustained, this list comprehending only those captures of which I have received official complaints. The victims have been many more, besides violations of territory by landing and plundering ashore with shocking circumstances.

"One city alone on this coast," he says, "has armed twenty-six ships which prey on our vitals, and a week ago three armed ships of this nature were in that port waiting for a favourable occasion of sailing for a cruise.

In July, 1820, the Portuguese Minister proposed that the United States should appoint Commissioners to confer and agree with Commis-

\* Papers presented to Congress, December 1862, Nos. 196, 198, 201, and 323.

sioners of the Queen of Portugal in what reason and justice might demand.

But Mr. Adams again says that for wrongs committed in the United States' territory, Portuguese subjects have a remedy in the Courts of Justice, but "for any acts of the citizens of the United States committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible."

To this most just principle, which was again referred to by Mr. Secretary Clayton, and maintained against the Government of Portugal to this hour, the United States must be held still to adhere. No matter how many rich Portuguese ships were taken; no matter even what flag was borne by the vessels which took them, for these acts of the citizens of the United States acting as the captains, officers, and crews of those cruisers, the United States' Government declared itself not responsible. Nor was that Government induced to depart from that ground by the urgent representations of the Portuguese Minister in his letter to Mr. Webster of the 7th of November, 1850, that "by due diligence on the part of the Government and the officers of the United States, the evil might have been prevented," and that "the fitting out of these vessels was not checked by all the means in the power of the Government, but that there was a neglect of the necessary means of suppressing these expeditions. With regard to Spain the case was somewhat different, as the United States had many outstanding claims against the Government of Spain; and, on the other hand, the claims of Spain were rested upon the interpretation placed by her on her Treaty with the United States. The claims of the United States were used as a set off against the claims of Spain, on account of the depredations committed by the United States' cruisers commanded by United States' captains, and in respect of other matters; and both orders of claims were renounced and abandoned by a Treaty between Spain and the United States, concluded on the 22nd of February, 1819.

Before I refer to the conduct of Great Britain during the present civil war, I must for a moment allude to an address of President Monroe in regard to the South American insurrection:—"The revolutionary movement in the Spanish provinces in this hemisphere attracted the attention and excited the sympathy of our fellow-citizens from its commencement." Such is the statement of President Monroe in his special Message of the 8th of March, 1822. It must be acknowledged that in this country the gallantry of the people of the Southern States, in their endeavours to give those States an independent position in the world, excited a large amount of sympathy. It must be acknowledged also that the desire of large profits from the sale of cargoes induced many of the Queen's subjects to engage in blockade running. But, on the other hand, it must be said that no British subject appears to have commanded a Confederate cruiser, while United States' citizens seem frequently to have acted as captains of the privateers which, under the flag of Buenos Ayres, or some other South American State, committed depredations on Spanish and Portuguese commerce. Nor was the vigilance of Her Majesty's Government at fault when, as in the case of the steam-rams built at Birkenhead for a Confederate agent, they were fully convinced that vessels of war were being constructed for purposes hostile to the United States. Indeed, so decided and so effective was the action of the Government in detaining the vessels called the "El Tousson" and "El Monassir," that it appears by the published

Parliamentary Reports that a Member of Parliament charged the Government with having done and with having done on their own confession what was illegal and unconstitutional, without law, without justification, and without excuse. Unfounded as that charge was, yet, coming as it appears from high authority, it is obvious that nothing but the intimate conviction that those vessels were intended for Confederate vessels of war, that unless detained they would attempt to break the blockade of the United States' squadrons, and that such an act might have produced the gravest complications, could have sustained the Government under the weight of charges thus urged.

Let us compare this case, in which Her Majesty's Government detained and seized the ships with that of the "Shenandoah," to which you refer in which they did not interfere.

The "Shenandoah" was formerly the "Sea King," a merchant or passage steam-ship, belonging to a mercantile company. She was sold to a merchant, and soon afterwards cleared for China as a merchant-ship; not a tittle of evidence was ever brought before Her Majesty's Government by you or any one else to show that she was intended for the service of the Confederates. Had it been alleged even that her decks were stronger than usual, apparently for the purpose of carrying guns, it might have been plausibly answered that the China seas abounded with pirates, and that guns were necessary in order to drive them off.

But it is said that guns and men were sent to meet a Confederate vessel at sea. So far as guns are concerned, this is not an offence against our laws; nor am I aware of any authority of international law according to which the British Government could be bound to prevent it. So far as men are concerned they could not be interfered with, without evidence of an intention or engagement to serve as Confederate seamen, and no such evidence was ever offered to Her Majesty's Government. What if these guns and men were sent in a vessel which cleared for Bombay? Would it have been right for Her Majesty's Government, without evidence, to seize such a vessel? Would not proceedings thus unauthorised by law or by any legal grounds of suspicion have been loudly and universally condemned? It is true that arms were sent out to the "Olinde," a French vessel, and that the "Sea King," having changed its character at sea, appeared afterwards as a Confederate ship of war. But in the words of Mr. Adams in 1818, "For such events no nation can in principle, nor does in practice, hold itself responsible." With regard to the export of arms sent by individuals in this country to vessels on the high seas, it must not be forgotten that the Government and Courts of the United States have always upheld the legality of this traffic. On the subject of certain memorials of British subjects sent to the Secretary of State of the United States during the Revolutionary war, Mr. Jefferson says, "We have answered that our citizens have always been free to make, send, or export arms; that it is the constant occupation and livelihood of some of them. To suppress their callings, the only means, perhaps, of their subsistence, because a war exists in foreign and distant countries with which we have no concern, would hardly be expected. It would be hard in principle and impossible in practice."

This, be it recollected, was not the opinion of Mr. Jefferson alone; he wrote by the direction of General, then President, Washington.

With respect to the alleged destruction of the

mercantile navigation of the United States, it must be noted that it has been common to transfer American merchant-ships, without change of cargo or of crew, nominally to British owners in order to avoid the higher rates of insurance payable during war: With peace the mercantile marine of the United States will, I have no doubt, be at least as numerous as before.

I am happy to see that you declare yourself by no means insensible to the efforts which Her Majesty's Government have made, and are still making, to put a stop to such outrages on this kingdom and its dependencies, and that you cannot permit yourself to doubt the favourable disposition of the Queen's Ministers to maintain amicable relations with the Government of the United States; nay, further, you state that the avoidance of the gravest of complications "has been owing in the main to a full conviction that Her Majesty's Government has never been animated by any aggressive disposition towards the United States, but, on the contrary, that it has steadily endeavoured to discountenance, and in a measure to check, the injurious and malevolent operations of many of her subjects." The question then really comes to this: Is Her Majesty's Government to assume or be liable to a responsibility for conduct which Her Majesty's Government did all in their power to prevent and to punish? A responsibility which Mr. Adams on the part of the United States' Government in the case of Portugal positively, firmly, and justly declined.

Have you considered to what this responsibility would amount?

Great Britain would become thereby answerable for every ship that may have left a British port and have been found afterwards used by the Confederates as a ship of war: nay, more, for every cannon and every musket used by the Confederates on board any ship of war if manufactured in a British workshop.

I now come to that part of your letter which relates to the future.

The late successes of the United States' armies give us every reason to hope for a speedy termination of the war. In such case the restrictions which have been imposed upon the vessels of the United States as belligerents will of course cease. In such case also it is to be presumed the cruisers and privateers of the Confederates will be at once sold and converted into merchant-vessels. But the present state of affairs does not allow me to speak with certainty upon this point.

The questions remain however, first, whether the United States' vessels of war will be now allowed to come into the harbours of Her Majesty's dominions without other restrictions than those usual in times of peace; and another question closely connected with it, namely, whether the Confederates are still to be treated as belligerents.

My answers are the following:—

In regard to the first question, Her Majesty's Government are quite willing that vessels of war of the United States shall be treated in the ports of Her Majesty in the same manner as Her Majesty's vessels of war are treated in the ports of the United States, with this single exception, that if an enemy's vessel of war should come into the same port, the vessel which shall first leave the port shall not be pursued by its enemy till twenty-four hours shall have elapsed.

Before answering the second question, I wish to know whether the United States are prepared to put an end to the belligerent rights of search and capture of British vessels on the high seas?

Upon the answer to this question depends the course which Her Majesty's Government will pursue.

All that I can do further is to assure you that Her Majesty's Government, who have lamented so sincerely the continuance of this painful and destructive contest, will hail with the utmost pleasure its termination, and will view with joy the restoration of peace and prosperity in a country whose well-being and happiness must always be a source of satisfaction to the Sovereign and people of these realms.

I am, &c.  
(Signed) RUSSELL.

No. 3.

Mr. Adams to Earl Russell.—(Received May 21.)

Legation of the United States, London.

My Lord, May 20th, 1865.

I HAVE had the honour to receive your note of the 4th instant, in reply to mine of the 7th of last month. I have already taken the earliest opportunity to transmit a copy to my Government. If it should not so happen that the course of events dispose of the matter beforehand, I shall probably receive instructions which will enable me to give the information which your Lordship appears to desire.

Pending the receipt of these, however, I must ask pardon for observing that in the notice which you have been pleased to take of the arguments submitted in my note, you have so far extended the field of discussion as to make it my duty to proceed in it still farther.

And here I would beg leave to remark that if I am to judge of the general statement made of my position by the abstract of it presented to me by your Lordship, I must have very grievously failed in offering the logical sequence of my propositions as distinctly as I had desired to do. This will render necessary another effort to place them before you in the following brief recapitulation:—

It was my wish to maintain—

1. That the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas before they had a single vessel afloat, was precipitate and unprecedented.

2. That it had the effect of creating these parties belligerents after the recognition, instead of merely acknowledging an existing fact.

3. That this creation has been since effected exclusively from the ports of Her Majesty's kingdom and its dependencies, with the aid and co-operation of Her Majesty's subjects.

4. That during the whole course of the struggle in America, of nearly four years in duration, there has been no appearance of the insurgents as a belligerent on the ocean, excepting in the shape of British vessels, constructed, equipped, supplied, manned, and armed in British ports.

5. That during the same period it has been the constant and persistent endeavour of my Government to remonstrate in every possible form against this abuse of the neutrality of this kingdom, and to call upon Her Majesty's Government to exercise the necessary powers to put an effective stop to it.

6. That, although the desire of Her Majesty's Ministers to exert themselves in the suppression of these abuses is freely acknowledged, the efforts which they made proved in a great degree powerless, from the inefficiency of the law on which they relied, and from their absolute refusal, when

solicited, to procure additional powers to attain the object.

7. That by reason of the failure to check this flagrant abuse of neutrality the issue from British ports of a number of British vessels, with the aid of the recognition of their belligerent character in all the ports of Her Majesty's dependencies around the globe, has resulted in the burning and destroying on the ocean a large number of merchant-vessels and a very large amount of property belonging to the people of the United States.

8. That, in addition to this direct injury, the action of these British-built, manned, and armed vessels has had the indirect effect of driving from the sea a large portion of the commercial marine of the United States, and to a corresponding extent enlarging that of Great Britain, thus enabling one portion of the British people to derive an unjust advantage from the wrong committed on a friendly nation by another portion.

9. That the injuries thus received by a country which has meanwhile sedulously endeavoured to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification.

In making this recapitulation it is no part of my design to go over any of the reasoning which has already been exhausted in the correspondence which I have had the honour heretofore to hold with your Lordship. I shall endeavour to confine myself to such points as may have been raised by the new matter embodied in the note to which I now have the honour to reply.

With regard to my first proposition, I have ventured to affirm that the recognition of the insurgents as belligerents on the 13th of May was precipitate and unprecedented. That it was precipitate is clear from the fact that not a single vessel entitled to the character was at that moment afloat on the ocean, and that even on the land the war itself had barely commenced in the bloodless capture of Fort Sumter. That it was unprecedented I must infer that your Lordship does not design to dispute, since it appears that you have not availed yourself of my invitation to furnish me with any examples.

Nevertheless, I have endeavoured, so far as I was able myself, to investigate the matter in order that I might be fully satisfied in regard to the solidity of the reasons which your Lordship has done me the favour to offer for so suddenly taking this step. I have found in history an abundance of instances of insurrection, either temporarily or ultimately successful; in most of them there was much more of necessity pressing upon neutral Powers for deciding the points to which your Lordship has referred in your note; but I have failed to discover a single occasion upon which any of the Powers made a decision in anticipation of a case of immediate necessity presenting itself to their attention.

In this connection I may, perhaps, be pardoned for reminding your Lordship of the circumstances connected with the breaking out of the revolution in the British Colonies in America. It could not, then, be said that cruisers and merchant-vessels did not at once swarm on the ocean. Neither was the other contingency absent of the decision of Her Majesty's Government to close some ports and to blockade others. Yet I do not perceive that France, however well inclined to do so, did actually take a single step to declare, by Proclamation, these insurgents as belligerents at any time.

The course which it did take, the same which I find to have been usual, was to await the arrival of an insurgent vessel in her ports. When that event did happen, a decision was made. It was received as belonging to a belligerent. The same course was likewise taken in Holland. But I must beg leave to remind your Lordship that even this quiet proceeding was instantly denounced by His Majesty's Government in both cases as a wrong demanding reparation, and was made one of several grounds for which, in the end, Great Britain made war successively against each nation.

But the immediate recognition of the insurgents by a Proclamation was not the only unprecedented proceeding resorted to by Her Majesty's Government to create a status which had no actual existence. In advance of that step it now appears that measures were taken and overtures were made to effect a species of diplomatic negotiation with the so-called authorities at Richmond, for the purpose of gaining their adhesion to the four points of the celebrated Treaty of 1856. Considering that the party applied to had not then, and has not at any moment since ever been able to boast of sailing a single vessel of its own construction, equipment, and manning this might very naturally have been construed by it as equivalent to offering to create for it a status in the ports of the proposing party, applying in advance of any idea of profiting by such a privilege. I do not intend to affirm that Her Majesty's Government, in taking this extraordinary step, had any design to hold forth an invitation. On the contrary, I disclaim any such idea. But it must be obvious to your Lordship that some responsibility is often incurred for the injurious consequences naturally flowing from human action, even though there may not be the presence of evil intention. From the evidence already before the public it does not admit of a doubt that these proceedings, taken together, did have the effect of encouraging the insurgents to a degree which led to the prosecution of their subsequent audacious policy.

The insurgents ultimately became a belligerent on the ocean solely by reason of the facilities furnished them in Her Majesty's ports. The fact appears to me to be indisputable. For down to the close of the war, with the exception mentioned in my former note, of two passenger steamers stolen from the citizens of New York, not a single effective vessel of theirs has been seen on the ocean, excepting the six or seven which have been wholly supplied in and from this kingdom. Of the preparation of these steamers for the purpose indicated, I have endeavoured from time to time to furnish your Lordship with such evidence as I had it in my power to obtain. For a considerable time I found myself unable to stem the combined effect of the secret sympathy of Her Majesty's officers in the port of Liverpool, and of your Lordship's very natural incredulity based on their reports, in procuring more than formal attention to my representations. Thus it was that the gun-boat "Oreto" got away, and soon after became the armed privateer the "Florida." All the statements I had the honour to submit proved true to the letter, but nevertheless the facility with which the evasion had been accomplished furnished the strongest encouragement to the subsequent great extension of the field of operations.

It was at that moment that a deliberate policy was adopted by the insurgents, under which a base was made in this kingdom for all the extensive warlike operations since conducted by them. The officers were then established, and all the ramifications of a bureau regularly organized.



The next example was that of gun-boat No. 290, afterwards well known as the cruizer the "Alabama." I refer to this case once more only because it has been particularly referred to by your Lordship. I do so for the purpose of expressing my dissent from the statement made in your note in regard to certain important particulars. Your Lordship is pleased to state that the papers affording evidence of a design to equip this ship for the Confederate service were furnished to you on the 22nd and on the 24th of July. This is certainly true. But your Lordship will be kind enough to remember that my first note, giving information as to the character of that vessel, was dated on the 23rd June, that is, one month preceding. On the 4th of July, the Commissioners of Her Majesty's Customs, to whom that representation was referred, made a report admitting the fact that the vessel was certainly built for a ship of war, but affirming that the evidence presented of her being intended for the so-called Confederate Government was not sufficient to justify a detention. The concluding sentence in their letter was in these words. I pray permission to ask your Lordship's particular attention to them:—

"We beg to add that the officers at Liverpool will keep a strict watch upon the vessel, and that any further information that may be obtained concerning her will be forthwith reported."

Here was a distinct pledge on the part of two of Her Majesty's officers that "they would keep a strict watch on this vessel," which pledge was sent to me with your Lordship's note of the 4th of July, requesting me to obtain such further evidence as might tend to show the destination of the vessel. Considering this as a distinct engagement, sanctioned by Her Majesty's Government, to keep faithful watch over that vessel so long as it might be necessary to obtain more evidence as to her character, the precise date of the receipt of that evidence becomes a question of secondary importance. The true question appears to be how that pledge was actually redeemed. This will appear clearly enough in the sequel.

On the 9th of July, the Consul made a statement to the Collector of facts as they had become known to him. He entered into a number of details in respect to the persons engaged in connection with this vessel, naming individuals with a particularity certainly deserving of some investigation by Her Majesty's officers at Liverpool, if they really meant to satisfy themselves that she ought to be detained. But it does not appear that they considered it their duty to initiate or even to carry on any inquiry. The Board of Customs contented themselves with a formal reply on the 15th instant, denying that there was sufficient *prima facie* evidence to justify a seizure of the vessel.

On the other hand, my Lord, I must take the liberty to remark, after a calm re-examination of the substance of that letter, that if there was not *prima facie* evidence enough in it to justify the seizure, there was matter enough in it to make it the bounden duty of Her Majesty's officers to lose no time and omit no effort to obtain the evidence on their own account to verify or to disprove the allegations.

They do not so appear to have read their duty. The consequence was that more time was necessary for me to procure the information which as officers of the Crown, they admit in their own letter, they ought to have procured themselves. I did obtain evidence, though the process naturally consumed time. That evidence was submitted on the 21st of July by the Consul at Liverpool to the Collector of that port, and by him referred to the Board of Customs. The deliberate answer of that body was

made on the 23rd of July, and it was to the effect that it was not sufficient to justify any steps being taken against the vessel under the law.

Thus far it appears that although Her Majesty's officers had pledged the Government to keep faithful watch over the vessel and report any further information they might obtain, no one of them seems to have been disposed to pay the smallest attention to any representations or any evidence offered by myself or any agent of the United States, even so far as to stimulate his own action in any way whatever. A change now took place, to the nature of which I beg most particularly to call your Lordship's attention.

On the next day after this decision of the Customs Board, I had the honour of sending to your Lordship copies of six of the very same depositions which had been already sent to them. Whether these would by themselves have met with a better fate I cannot venture to pronounce. But on the 24th I transmitted two additional ones, to which was appended a professional opinion by a British subject, distinguished as a Queen's Counsel, which had been given to me after a careful examination of all these papers. It was to the following effect:—

"1. That if the Collector of Liverpool did not detain the vessel he would incur a heavy responsibility, of which the Board of Customs must take their share.

"2. That if the vessel was allowed to escape, it deserved consideration whether the Federal Government would not have serious grounds of remonstrance."

These were ominous words. They laid the responsibility distinctly upon the very parties who had given the original pledge of vigilance and attention. And yet during the very interval in which Her Majesty's Government was deliberating upon their purport, the vessel was permitted to escape. Neither did this event occur without most explicit warning of the danger having been given by a person acting on behalf of the United States. As early as the 23rd of July, six days before that escape, Mr. Squarry, the Solicitor employed in the case, addressed a note to the Secretary of the Customs Board warning them most distinctly of the fact that the vessel was ready for sea, had fifty men on board, and could sail at any time. On the 26th he wrote another letter, repeating the warning once more; yet in spite of the promise to keep a strict watch, and in spite of these repeated warnings, the vessel was permitted to steam out of Liverpool just as if no cause of suspicion of her destination had ever been excited. And as if to crown the extraordinary character of the transaction, after receiving from Mr. Squarry notice on the 29th that the vessel was actually gone, it was not until the 31st that telegrams were issued to Liverpool ordering her detention. I must respectfully represent to your Lordship that this proceeding, so far from appearing to do any justice to the demand of the United States, looks almost as if it were intended as a positive insult.

It is true that on the same day telegrams ordering a detention were sent to Cork; likewise, on the 1st of August, to Beaumaris and Holyhead; and on the 2nd of August a letter was sent to the Collector at Cork to the same effect. For all practical purposes, they might have been sent just as well at this moment that I am addressing these lines to your Lordship. It further appears that instructions were sent to the Governor of the Bahamas in case the vessel should visit Nassau. The vessel did not visit that place; but the next time she visited a port within Her Majesty's do-

minions was after she had entered upon her career of depredation, and then instead of being detained, she was politely received and acknowledged as the vessel of a *bonâ fide* belligerent.

It now appears that from the day when, by the flagrant negligence of Her Majesty's Board of Customs, this vessel, admitted to be intended for war purposes, was suffered to depart from the port of Liverpool, down to the hour of her destruction by the United States steamer "Kearsage," off the coast of France, she came again and again into ports within Her Majesty's jurisdiction; and instead of being treated as Her Majesty's Government directed if she should go to Nassau, she was everywhere hailed with joy and treated with hospitality as a legitimate cruiser.

On behalf of my Government, I respectfully protest against the whole of this proceeding as contrary to recognized principles of international law. What the obligation of Her Majesty's Government really was in this instance is so clearly laid down by a distinguished writer, notoriously disposed never to exaggerate the duties nor to undervalue the privileges of neutrals, that I will ask the liberty to lay before you his very words:—

"Le fait de construire un bâtiment de guerre pour le compte d'un belligérant, ou de l'armer dans les Etats neutres, est une violation du territoire. Toutes les prises faites par un bâtiment de cette nature sont illégitimes, en quelque lieu qu'elles aient été faites. Le Souverain offensé a le droit de s'en emparer, même de force, si elles sont amenées dans ses ports, et d'en réclamer la restitution lorsqu'elles sont, comme cela arrive en général, conduites dans les ports hors de sa juridiction. Il peut également réclamer le désarmement du bâtiment illégalement armé sur son territoire, et même le détenir, s'il entre dans quelque lieu soumis à sa souveraineté, jusqu'à ce qu'il ait été désarmé."

It is, then, with undoubting confidence in the justice of the reasoning here presented that I take the liberty to re-affirm the validity of the claims of my Government for all the damage done by by this vessel during her career, and ask reparation therefor.

With respect to the extract from the letter of Mr. Seward to me of the 13th August, 1863 (actually written in 1862), by a clerical error in your Lordship's note that for a time misled me, which you are pleased to quote as a proof that he was perfectly satisfied with the proceedings, I can only remark that the very date itself sufficiently proves that his language never could have been intended to apply to the extent to which your Lordship appears to suppose, for at that moment he had been but very partially put in possession of all the facts connected with the case. His remark obviously pointed only to the disposition of your Lordship, which has never been brought into question. What he has thought of the whole case since, what instructions have been given to me in consequence, are matters too well known to your Lordship to render further explanation necessary.

Passing from this point to the more general question between the two countries, I proceed to the task of considering an argument of your Lordship of a widely different description; this is one drawn entirely from the authority supplied by the previous practice of the Government which I have the honour to represent. You cite this as an example to sustain the position taken by Her Majesty's Government against the present claim. It is urged that, in at least two instances cited, where similar claims were presented by the Representatives of foreign Powers to the United States, they

were replied to with substantially the same reasoning now repeated by Her Majesty's Government. These are the cases of Spain and Portugal, the commerce of which countries had suffered from depredation on the ocean committed by vessels built, armed, manned and equipped by citizens of the United States and despatched from their ports.

The first remark that I would pray permission to submit in connection with this view of the subject is this. That even if it were true that the Government of the United States had, half a century since, refused to recognize the just claims of other Powers for damage done, by reason of their omission to prevent the abuse of their neutral ports to the commerce of those Powers, it could in no degree change the nature of any subsequent omission or neglect committed by other Powers at this day. It is a principle of morals too thoroughly known to your Lordship to require my dwelling upon it for a moment, that the wrong doing of one party cannot be cited in justification of a repetition of the act by another. Surely if the United States' Government had ventured upon declaring what was once known as a paper blockade of the whole Southern coast, Her Majesty's Government would not have been content to be told that such was the acknowledged practice of Great Britain many years ago. Neither would it have been better satisfied if the United States had resorted to the press-gangs in the outset of the war to fill their ships with British subjects forced against their will to fight their own countrymen in the "Alabama," and "Floridas," and "Shenandoahs," and "Tallahasseees," depredating on the ocean, to be told, in answer to their remonstrances, that just such was the treatment Americans experienced at the hands of Great Britain prior to the war of 1812.

But conclusive as this reasoning may be held to be to annul at once all the authority that springs from mere precedent as its source, I am by no means disposed to resort to it in the cases cited by your Lordship. They are very familiar to me, and to my view are in themselves so far from furnishing strength to the positions which have been taken by your Lordship, that they bear directly the contrary way. The parallel attempted to be drawn is, in other words, wholly defective and inapplicable.

In regard to the injuries inflicted by citizens of the United States upon the commerce of Spain, the extract which your Lordship is pleased to quote from the Official note of the Representative of the latter country, Don Luis de Onis, certainly does show that such were actually committed. I am not aware that the Government of the United States ever denied the fact. The expedition fitted out by General Miranda against a certain portion of the coast of South America then under Spanish rule, was unquestionably a violation of the neutrality of the country which ought to have been prevented. All these cases constituted claims which the Spanish Government held against the United States, very much in the same way that the claims for damage done by the "Alabama," &c., issued from British ports, are now held by the United States. On the other hand, however, it should be observed that out of the wars of Europe there had grown up a much larger amount of claims on behalf of the people of the United States for injuries done to their commerce by illegal seizure and condemnation of their vessels in the ports of Spain. In progress of time, the necessity became urgent on both sides to enter into a deliberate examination of the merits of these respective claims, and, if possible, to

arrive at fair terms of settlement. A plan of a treaty was proposed, embracing all that was regarded as fairly to be brought forward on the two sides. It was during this process that Don Luis de Onis, the very same person whom your Lordship has been pleased to cite as making the complaint, himself, on the 24th of October, 1818, presented a project of six Articles intended to include every one of those objects.

There can be no doubt that this proposal was intended to cover the very claim which was presented in the previous note of January, 1817, an extract from which your Lordship has done me the honour to quote. If your Lordship should have any inclination to draw it into question, I shall only have to refer you to a second project presented by the same individual on the 16th of November, 1818, in which occur these words:—

“My fourth proposal to your Government has for its object the renunciation by both Governments and nations of all claims for spoiliations respectively suffered by either of the two Powers or their subjects, until the signing of the Treaty.”

And as voucher for what was meant, there is attached to this paper a document containing three separate lists: one, of the names of the Spanish vessels taken; another, of the privateers fitted out in the American ports, by which they were taken; and a third, of the property taken in those vessels. In other words, these constitute the very claims for injuries complained of in the note of M. Onis, to which your Lordship has been pleased to refer.

To this proposition so presented by M. Onis, the Government of the United States raised no objection. It was, therefore, so far as it went, admitted as an item *pro tanto* on the side of Spain in the settlement of the opposite questions between the two nations. As such, it was incorporated into the project of a Treaty drawn up by Don Luis de Onis for the consideration of the United States' Government, and delivered on the 9th of February, 1819. In this paper it makes a portion of the Xth Article. The renunciation of His Majesty was made to extend to all injuries caused by the expedition of Miranda, fitted out and equipped at New York, and “to all claims of subjects of His Catholic Majesty upon the Government of the United States, in which the interposition of His Catholic Majesty's Government has been solicited before the date of this Treaty, and since the date of the Convention of 1802, or which may have been made to the Department of Foreign Affairs of His Majesty, or to his Minister in the United States.”

It is not to be supposed for a moment that in making this voluntary offer, the Spanish Government did not expect to gain for it a just equivalent in settling the other and less favourable terms of the Treaty.

This offer so made was accepted by Mr. Adams for the United States, and incorporated in his counter project offered to Don Luis de Onis on the 13th of February, 1819.

It therefore now stands *totidem verbis* as a part of the Treaty signed by the Representatives of the two countries on the 22nd of February of that year.

All the papers from which these extracts are taken have been long before the world. I trust I may therefore be pardoned if I express no small astonishment that your Lordship should have fallen into the error of affirming in the note which I have had the honour to receive, that “it does not appear that any compensation was ever made for any of these seizures.”

I now ask leave to proceed to the consideration of the other case referred to in your Lordship's

note, the claim of Portugal upon the United States for similar injuries to those complained of on behalf of Spain. I am the more disposed to approach the subject that, unlike the other case, it is new in the correspondence which it has been my duty to hold with your Lordship, and that it gives me an opportunity to correct some misapprehensions which appear to exist as to its true character and bearing on the present discussion.

The extracts from various public papers of the Government of the United States with which your Lordship has favoured me, sufficiently establish the fact as stated, to wit:—

“That the revolutionary movement in South America excited the sympathy of the people of the United States.”

Your Lordship is pleased here to apply the parallel so far as to admit that in this Kingdom there was similar sympathy with “the people of the Southern States” in what you describe as “their endeavours to give these States an independent position in the world.” This was an unfortunate illusion as to the true objects of that struggle of which I have been aware, but which I have never ceased to regret.

Yet I would respectfully call the attention of your Lordship to the circumstance, in connection with this supposed parallel, that notwithstanding the sympathy of the people of the United States with South America, and notwithstanding that the insurgents did possess both open ports and abundant facilities for cruising on the ocean, the Government of the United States did not herald their movement by a prompt declaration recognizing these people as a belligerent Power as against Spain.

So far was this from being true, that no sooner was it known that movements were set on foot to make a few of the ports of the United States a base for the operations of the insurgents, aided by citizens of the country, than orders were given to the proper officers of the Government to apply the whole power of the existing laws to prevent it. In proof of this assertion, I pray permission to submit the reports of the prosecuting attorneys for the two districts in which the offences were most committed. Copies of these papers will be found appended to this note. They will show that seven different individuals, citizens of Spanish America, engaged in these operations against the neutrality of the country were subjected to trial for their offences in the Courts. I would here beg leave to interpose the remark that, so far as I know, in spite of all the evidence which I have presented to your Lordship as to the complicity of leading insurgents of the United States residing in this Kingdom in the violations of neutrality here committed, not a single prosecution has ever been attempted by Her Majesty's Government. They will also show that the only limit to the effort of the Government to punish the parties concerned was the inefficacy of the provisions of the existing law passed in 1794. It was this difficulty which soon forced itself upon the attention of the President.

It is here that I beg leave to take up the case of Portugal, and to ask attention to those particular points in which the action of the United States in this case differs most materially from that of Her Majesty's Government, with which it has been attempted to make a parallel.

On the 20th of December, M. J. Correa de Serra, the diplomatic representative of Portugal, at Washington, addressed a note to Mr. Monroe, then the Secretary of State, presenting the particulars of a strong case of violation of the law which had just happened in Baltimore. He pro-

ceeded frankly to acquit the Government of any want of disposition to punish the offence, and to mention the obstacle, which he designated to be an imperfection of the Statute Law.

I pray your Lordship's permission to cite the passage which explains the nature of the request he made in consequence:—

"I apply, therefore, to this Government in the present instance not to raise altercations or to require satisfaction; which the Constitution of the United States has not, perhaps, enabled them to give, because I know that the Supreme Executive of this nation, all powerful when supported by law, is constitutionally inactive when unsupported by it. What I solicit of him is the proposition to Congress of such provisions by law as will prevent such attempts for the future. I am persuaded that my magnanimous Sovereign will receive a more dignified satisfaction, and worthier of his high character, by the enactment of such laws by the United States which, insuring the respect due to his flag for the future, would show their regard for His Majesty, than in the punishment of a few obscure offenders (even if attainable), who, disowned as they are by the United States, no doubt, if they take any unwarrantable liberty with the property of His Majesty's subjects, meet the fate every honest mind wishes to them, and serve as examples and warning to those who may in future feel piratical dispositions. I rely on the President's wisdom, and the wish I am sure he must feel of putting an end to these shameful practices, and he will take the proper measures to have my just requisition fulfilled."

This was on the 20th December. Only six days elapsed after the reception of this application, when Mr. Madison, then the President, addressed a Message to both Houses of Congress in the following words:—

"It is found that the existing laws have not the efficacy necessary to prevent the violations of the obligations of the United States as a nation at peace towards belligerent parties, and other unlawful acts on the high seas by armed vessels equipped within the waters of the United States.

"With a view to maintain more effectually the respect due to the laws, to the character, and to the neutral and pacific relations of the United States, I recommend to the consideration of Congress the expediency of such further legislative provisions as may be requisite for detaining vessels actually equipped, or in course of equipment, with a warlike force, within the jurisdiction of the United States: or, as the case may be, for obtaining from the owners or commanders of such vessels adequate securities against the abuse of their armaments, with the exceptions in such provisions proper for the cases of merchant vessels furnished with the defensive armaments usual on distant and dangerous expeditions, and of a private commerce in military stores permitted by our laws, and which the Law of Nations does not require the United States to prohibit."

The precise points which he desired to have incorporated into a Statute are specified in a note from the Secretary of State to Mr. Forsyth, Chairman of the Committee on Foreign Relations. They are these:—

"Having communicated to you verbally the information asked for by your letter of the 1st instant, except so far as it relates to the last inquiry it contains, I have now the honour to state that the provisions necessary to make the laws effectual against fitting out armed vessels in our ports for the purpose of hostile cruising, seem to be:—

"1. That they should be laid under bond not to violate the Treaties of the United States, or the obligations of the United States under the Law of Nations, in all cases where there is reason to suspect such a purpose on foot, including the cases of vessels taking on board arms and munitions of war, applicable to the equipment and armament of such vessels, subsequent to their departure.

"2. To invest the Collectors, or other Revenue Officers where there are no Collectors, with power to seize and detain vessels under circumstances indicating strong presumption of an intended breach of the law; the detention to take place until the order of the Executive, on a full representation of the facts had thereupon, can be obtained. The Statute Book contains analogous powers to this above suggested (see particularly the 11th section of the Act of Congress of April 25, 1808).

"The existing laws do not go to this extent. They do not authorize the demand of security in any shape, or any interposition on the part of the magistracy as a preventive, where there is reason to suspect an intention to commit the offence. They rest upon the general footing of punishing the offence merely where, if there be full evidence of the actual perpetration of the crime, the party is handed over, after the trial, to the penalty denounced."

Experience both in America and in this kingdom has united to prove that the measure of restraint here pointed out is almost the only effective one which can be resorted to in such cases. Had it been found possible to use it here, I am confident that a great portion of the difficulties experienced by Her Majesty's Government during the late war would have been avoided.

On the 3rd of March, 1817, a temporary law was passed to meet the emergency, which was received by the Portuguese Minister with the greatest satisfaction.

On the 8th of March, 1818, the Portuguese Envoy addressed a representation to the Secretary of State in regard to the capture of three vessels by one of these illegal cruisers. But it should be particularly noted that these cases appear all to have grown out of depredations committed by a single vessel which had escaped from the United States previous to the date of the enactment of the new statute. The captures themselves took place on the ocean at about the time of its passage.

With the aid of this explanation your Lordship will be better able to appreciate the force of the language of Mr. Adams, then the Secretary of State, in his reply to the Portuguese Minister, which you have done me the honour to quote in your note. The Government had not only literally done all in its power, under existing laws, to prevent these violations of neutrality, but had, at the request of the Envoy himself, procured the adoption by Congress of a new and more stringent statute. Surely, under such circumstances, nothing more could reasonably be expected of it.

This seems to have been the opinion of the Portuguese Minister himself. So well satisfied was he with the practical operation of this law in checking these enterprises, that, at the moment when it was about to expire by its own limitation of two years, on the 4th of February, 1819, he once more came forward to express his anxiety about losing it, and addressed an earnest representation to the United States' Government to secure an extension of the term. The reply was to the effect that it had not only been incorporated into a new and improved form, but was made permanent.

This will appear from the following note of Mr. Adams:—

"Sir,—In answer to your letter of the 4th instant, I have the honour of informing you that the Act of Congress of 3rd March, 1817, to which it refers, was repealed by the Act of the 20th of April last, entitled an Act in addition to the Act for the punishment of certain crimes against the United States, and to repeal the Acts therein mentioned, being the eighth chapter of the laws of the last session. On referring to this last-mentioned statute, which is not of limited duration, you will find that the provisions of the temporary Act of 3rd March, 1817, are re-enacted by it."

From all which proceedings it distinctly appears that, although there were some violations of neutrality committed in defence of every precaution both before and afterwards, yet the position of the United States in regard to every complaint was an impregnable one. It had done everything in its power, not only to execute existing laws, but to provide more stringent and satisfactory enactments to remedy the defects of the old ones.

Had Her Majesty's Government in its wisdom decided to do as much as this in the late war, I am not sure that I should have been able to resist the argument drawn from the example your Lordship has cited in its defence. But I regret to be obliged to remind you that so far was this from being the case, it took diametrically the opposite course. At an early period my Government, not unaware of the obstacles that were presenting themselves to the effective application of the existing statutes of Great Britain to the offences notoriously committed within this kingdom, directed me to call your Lordship's attention to the expediency of procuring for the Government more stringent provisions. I did then venture respectfully to propose to you that some steps should be taken to obtain at least such modifications of the existing Enlistment Act as might tend to make it a better preventive measure. Your Lordship was pleased in the first instance to respond favourably, at least so far as to make the adoption of such amendments conditional upon corresponding and simultaneous action on the part of the United States. But no sooner had I succeeded in obtaining from my Government its assent to a consideration of the arrangement, and communicated the result to you, than your Lordship will be so good as to recollect that I received for answer that Her Majesty's Government had in the interval reconsidered its decision, and had finally determined to rely upon the existing statutes as quite effective to answer the desired purpose.

From this survey of the two cases, it must then be obvious, that the parallel which your Lordship has attempted is by no means to be regarded as complete. Inasmuch as in the one instance, everything that was required as security by a foreign Power was actually done to please it, whilst in the other everything required was as positively declined. Hence the responsibility for the evil consequences which was lifted by its own action from the one party, seems to have been entailed with renewed force by its refusal to act upon the other.

Your Lordship is pleased to observe that you can never admit that the duties of Great Britain towards the United States are to be measured by the losses which the trade and commerce of the United States may have sustained. To which I would ask permission to reply that no such rule was ever desired. The true standard for the

measurement would seem to be framed on the basis of the clear obligations themselves, and the losses that spring from the imperfect performance of them.

With regard to the observations of your Lordship respecting the seizure by Her Majesty's Government of the two steam war-vessels constructed by Mr. Laird, at Liverpool, I have at all times endeavoured to bear my feeble testimony to the earnest desire then manifested to put a stop to that most outrageous of all the attempts that have been made to violate the neutrality of this kingdom. At the same time, however, since your Lordship has been pleased to open that subject, it is no more than my duty to observe that the proceeding does not appear to have terminated as, in accordance with Her Majesty's dignity, I am compelled to think it should have done, in fully upholding the authority of the sovereign Power, but rather in a necessity to resort to an indirect mode of escaping the hazard of recourse to the ordinary process of the Courts for the protection due to a foreign nation. So far as the claims of the Government of the United States are concerned, it matters little by what means the end may have been reached. At the same time, it is impossible for it not to have been made painfully conscious in the process that the security of the peace of the two nations from one of the most flagrant violations of international obligations ever attempted, should have been left to hang upon a mode of proceeding wholly foreign from the recognized and established law of the land.

The fact of the extraordinary decline of the mercantile navigation of the United States simultaneously with a corresponding increase of that of Great Britain, as shown in the Tables appended to my former note, does not appear to be disputed by your Lordship; nor yet the other fact, that it sprang from the transfer of vessels from the one side to the other by reason of the ravages committed by armed steamers fitted out from the ports of Great Britain. It is true your Lordship is pleased to avoid the natural inference which I have been compelled to draw from this state of things, by explaining the process in another way. You are pleased to affirm it as a fact that "it has been common to transfer American merchant ships, without change of cargo or of crew, nominally to British owners, in order to avoid the higher rates of insurance payable during war." But in reply to this I would remark, in the first place, that even if this statement be correct to a far greater extent than I should at present be disposed to admit, it is nothing less than a direct fraud on one of the belligerents, which, if it had had native vigour, instead of being an unthrifty offshoot from a purely British stock, would have furnished to it just ground for general retribution upon British commerce, by subjecting it to the most annoying suspicion and severe examination; and in the next, that the very fact of the admitted rise in the rates of insurance on American ships only brings us once more back to look at the original cause of all the trouble; to wit, the fact of the issue of all the depredating vessels from British ports, with British seamen, and with, in all respects but the presence of a few men acting as officers, a purely British character.

Thus it is that whatever may be the line of argument I pursue, I am compelled ever to return to the one conclusion: the nation that recognized a Power as a belligerent before it had built a vessel and became itself the source of all the belligerent character it has ever possessed on the ocean, must be regarded as responsible for all the damage that has ensued from that cause to

the commerce of a Power with which it was under the most sacred obligations to preserve amity and peace.

There remain a few minor points in your Lordship's note which might have elicited further comments on my part, but for the consideration that the positions taken in regard to them by my Government have been already on a former occasion sufficiently set forth. I am therefore reluctant, by further extending this note, to run the risk of trespassing unnecessarily on your Lordship's patience. I trust that, in performing the task to which my sense of duty calls me, I shall not be found to have in any degree transgressed the limits of amicable discussion to which it is the earnest desire of my Government that I should ever adhere, and which it is always my own disposition to observe.

I pray, &c.

(Signed) CHARLES FRANCIS ADAMS.

Inclosure 1 in No. 3.

*Mr. Dick, Attorney of the United States for the District of Louisiana, to the Secretary of State.*

(Extract.) *March 1, 1816.*

ATTEMPTS to violate the laws by fitting out and arming, and by augmenting the force of vessels, have no doubt been frequent, but certainly, in no instance, successful, except where conducted under circumstances of concealment that eluded discovery. In every instance where it was known that these illegal acts were attempting, or where it was afterwards discovered that they had been committed, the persons engaged, as far as they were known, have been prosecuted, while the vessels fitted out, or attempted to be fitted out, have been seized and libelled under the Act of the 5th of June, 1794; and when captures have been made by vessels thus fitted out and armed, or in which their force was augmented or increased within our waters, where the property taken was brought within our jurisdiction, or even found upon the high seas by our cruizers, and brought in, it has been restored to the original Spanish owners, and in some instances, damages awarded against the captors.

An enumeration of the cases in which individuals have been prosecuted for infringing, or attempting to infringe, our neutrality in aid of the Governments of New Spain, in which vessels have been seized and libelled, under the Act of the 5th June, 1794, together with a list of the vessels and property restored to the original Spanish owners (confining the whole to the operations of the year commencing March, 1815, and ending February, 1816), will show more conclusively, perhaps, than anything else can, how totally without foundation are the complaints, and how misplaced are the assertions, of the Minister of Spain on this head.

The Names of Individuals prosecuted in the District Court of the United States for the Louisiana District during the year 1815 for violating, or attempting to violate, the neutrality of the United States, in aid of the Government of the United Provinces of New Granada and of the United Provinces of Mexico.

José Alvarez Toledo.  
Julius Cæsar Amigone.  
Vincent Gambie.  
John Robinson.  
Romain Very.  
Pierre Lameson.  
Bernard Bourden.

List of vessels libelled for illegal outfits of the same Governments during the same period.

Brig "Flora Americana," restored.  
Schooner "Presidente," condemned.  
Schooner "Petit Melan," condemned.  
Schooner "General Bolivar" discontinued.  
Schooner "Engenen," *alias* "Indiana," condemned.  
Schooner "Two Brothers," restored.

Enumeration of vessels and property brought within the Louisiana district, captured under the flags and by authority of the Governments of New Granada and of Mexico, libelled on the part of the original Spanish owners, and restored upon the ground that the capturing vessels had been fitted out and armed, or had their force augmented within the waters of the United States.

1. Schooner "Cometa," restored April 1815.
  2. Schooner "Dorada," proceeds restored May 16, 1815, 3,050 dollars.
  3. Schooner "Experimento," restored August 3.
  5. The polacca brig "De Regla" and cargo, proceeds restored December 18, 1815, 19,209 dollars 50 cents.
  6. Schooner "Alerto" and cargo, being the proceeds of the capture of about eighteen small vessels, restored December 18, 1815, 62,150 dollars 5 cents.
- Damages awarded to the original owners against the captors in the two foregoing cases, 55,272 dollars 99 cents.
7. Cargo of the Schooner "Petit Melan," restored February 1, 1816, 2,444 dollars 31 cents.
  8. Cargo of the Schooner "Presidente," February 1, 1816, 10,931 dollars 15 cents.
  9. Schooner "Santa Ritor" and cargo, restored February 1, 1816, 37,962 dollars 94 cents.

The preceding account of Spanish property restored to the original proprietors after being in the possession of the enemies of Spain is defective, inasmuch as it does not comprehend the whole of the cases of restoration that have taken place within the period to which the detail is confined.

The very hasty manner in which I have made this communication, did not admit of a more accurate statement. The principal cases, however, are included in it.

In several other cases, where the property was claimed for the original Spanish owners, the claims were dismissed because it did not appear that any violation of our neutrality had taken place. The capturing vessels were not armed, nor was their force augmented within our jurisdiction, nor had the captures been made within a marine league of our shore. The principles that guided the decision of the Court, as well in restoring the property captured, where our neutral means had been used, as in declining all interference where that was not the case, manifest, I think, a disposition to and an exercise of the most rigid neutrality between the parties.

Inclosure 2 in No. 3.

Baltimore,

September 7, 1816.

SIR,  
IMMEDIATELY upon the receipt of your letters of the 16th of August, I obtained from the Collector of that port an affidavit, stating that Thomas Taylor had in April last sworn that he was a citizen of the United States, and, as such,

had cleared out the schooner "Romp," which vessel the Collector also declared, on oath, he believed to have cruized against the vessels of the King of Spain since that time. Upon which affidavit an intelligent Justice of the Peace of this city, well-disposed upon the score of political feeling to do as much as justice required towards the punishment of Taylor for his conduct, issued a warrant, by virtue of which Taylor was arrested. Upon its return, I appeared before the Justice (whose name is John Dougherty) and presented all the documents which were sent to me in company with your letter, which were read and received as evidence by him. I also caused a sailor who had served on board the "Romp," and who was at that time in hospital at this place, to be summoned, as also the Editor of the "American" newspaper, in which Taylor's letter had appeared, bearing date at "Baltimore, the 10th of July, 1816;" all of whom were examined on oath before the Justice. The sailor was cautioned not to any probable cause to believe he was concerned with, or advised Squire Fisk to commit the acts of piracy which were committed by him on his late cruise, and as Taylor never was on board the "Romp" from the time she left Baltimore. Thus ended this case, as far as I have gone.

\* \* \* \* \*

(Signed) ELIAS GLENN.

No. 4.

*Earl Russell to Mr. Adams.*

*Foreign Office,  
August 30, 1865.*

Sir,

HAVING purposely delayed an answer to your letter of the 20th of May, I now resume our correspondence at a time when the civil war has entirely ceased; when the whole territory of the United States is subject to the Government of the Union, and the United States have not an enemy in the world. I resume it, therefore, at a time such as was foreseen in your letter of the 23rd of October, 1863, "favourable for a calm and candid examination by either party of the facts or principles involved in cases like the one in question."\*

I resume it also at a time when Mr. Seward has recovered from the injuries he received from an accident, and the wounds inflicted by an assassin, and is therefore able to apply his remarkable powers of mind to the questions at issue; I take this opportunity of saying that no one rejoices more than myself at this happy recovery from injuries so serious.

In continuing, in this state of affairs, our correspondence, I must again express my satisfaction at finding that you do justice to the impartial intentions of Her Majesty's Government. I must here repeat that you have never permitted yourself to doubt the favourable disposition of the Queen's Ministers to maintain amicable relations with the Government of the United States; and you attribute the avoidance of the gravest of complications to a full conviction of Her Majesty's Government has never been animated by any aggressive disposition towards the United States, but that, on the contrary, it has steadily endeavoured to discountenance, and in a measure to check, the injurious operations of many of Her Majesty's subjects.†

This decisive testimony from a person of your high character, who has now for four years held

the confidential position of Minister of the United States accredited to Her Majesty, and has thereby been enabled to judge of the intentions of Her Majesty's Government throughout this long and destructive contest, is most gratifying to Her Majesty's Government. It is most satisfactory to know that you share in none of those suspicions and endorse none of those charges of an unfriendly and unfair disposition on the part of Her Majesty's Government, with which public writers and speakers have endeavoured to poison the public mind in the United States, and to produce ill-will and hatred between the two nations.

The question then, as I understand it, is now reduced to these terms: whether Her Majesty's Government have judged rightly the state of a friendly nation disturbed by a formidable insurrection, and whether they have correctly applied the law of nations in respect to their duties towards that friendly nation.

In recapitulating your statements on this subject, you say "that the injuries thus received by a country which has meanwhile sedulously endeavoured to perform all its obligations, owing to the imperfection of the legal means at hand to prevent them, as well as the unwillingness to seek for more stringent powers, are of so grave a nature as in reason and justice to constitute a valid claim for reparation and indemnification."

Differing, as Her Majesty's Government do, from your statement of the facts upon which the judgment of the two Governments is to be ultimately formed, I lay down with confidence the following propositions:—

1. That the history of modern nations affords no example of an insurrection against a central Government so widely extended, so immediate in its operation, so well and so long prepared, so soon and so completely furnished with the machinery of civil Government, a national representation, generals and officers of high military reputation, armies fully equipped and fortifications recently in possession of the established Government.

2. That intelligence reached Her Majesty's Government, in the spring of 1861, that seven combined States had declared in favour of this insurrection; that three more States, including the great and powerful State of Virginia, were preparing to join them; that these States commanded upwards of 3,000 miles of sea-coast; that they comprised more than 5,000,000 of people, exclusive of the negro slaves; that the President of the insurgent Government had proclaimed his intention of issuing letters of marque and reprisal; that the President of the United States, on the other hand, had proclaimed his intention to establish a blockade of all the ports of the Southern States; and that in these circumstances the commander of Her Majesty's naval forces on the North American station earnestly solicited instructions for his guidance.

3. That in view of these extraordinary events, unexpected and undesired, Her Majesty decided to proclaim her neutrality in this contest; to allow the belligerent blockade of more than 3,000 miles of coast, including of course the right of search, detention, and capture on the part of the United States, and on the other hand, as in duty bound, to recognize in the so-called Confederate States the rights of a belligerent Power.

4. That Her Majesty's Government put in force with fairness and impartiality the neutrality they had proclaimed.

5. That the Foreign Enlistment Act, which is intended in aid of the duties and rights of a neutral nation, can only be applied when a ship is armed or fitted out, or begun to be armed or fitted out,

\* Parliamentary Paper, North America, No. 1, 1864.  
† Mr. Adams, April 7, 1865.

and even in that case only when proof can be obtained that the ship so armed or equipped, or begun to be armed or equipped, is intended for the service of a Power at war with a friend or ally of Her Majesty.

6. That in the instance of the "Oreto," the case justifying the detention of the vessel was not complete; and in the case of the "Alabama," the proof was declared to be complete only on the very morning when the owners of the "Alabama," having by some means obtained information of what was intended, got away on a false pretence.

7. That the "Oreto" was begun to be built here, was afterwards detained and tried at Nassau, was acquitted, and was afterwards completed at Wilmington, a port of the Confederates.

8. That the iron-clad rams were detained, and afterwards seized at Birkenhead; that the so-called "Canton" or "Pampero" was prosecuted and convicted in Scotland; that the "Victor," afterwards the "Rappahannock," was forced to take refuge at Calais in order to avoid seizure, and till the close of the war never appeared on the seas.

9. That it is not enough to say that the Foreign Enlistment Act might have been amended and made more efficient, unless it be shown that the amendments suggested would have been clearly efficient, and would have been consistent with the laws of a free country.

10. That nothing but the most extensive employment of spies and informers, and the most arbitrary powers of detention and seizure on the most vague and slight suspicion, could have prevented a British or American merchant, in combination with a Confederate enemy of the United States, from sending an unarmed ship to distant neutral waters, from sending arms to the same waters, and from combining the ship and the arms in a hostile cruiser against the commerce of the United States.

11. That the "Shenandoah" was dispatched and armed in this manner.

12. That there is no reason or ground whatever to accuse Her Majesty's Government of failure in the performance of their international obligations during the four years of civil war, and consequently no valid claim can be made for reparation and indemnification.

With respect to your allegation that the concession of belligerent rights to the Confederates was "precipitate and unprecedented," I answer both epithets by saying, first, that our declaration followed, and did not precede, your own declaration of the intended blockade of six or seven considerable ports, and the declaration of an intention on the part of the Confederates to issue letters of marque; and, secondly, that a sudden insurrection of such magnitude being unprecedented, our recognition of its existence was necessarily likewise unprecedented.

But let me refer for a short time both to the law laid down by your own Courts on this subject, and the state of facts as shown by official documents. The judgment of the Supreme Court of the United States given in 1862 ("Black's Reports, Supreme Court," vol. ii, pp. 666-670) lays down with equal sense and learning the following propositions:—

"The right of prize and capture has its origin in the *ius belli*, and is governed and adjudged under the law of nations. To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory, in the possession of the other."

"The parties belligerent in a public war are independent nations; but it is not necessary to constitute war that both parties should be acknowledged as independent nations or sovereign States. A war may exist when one of the belligerents claims sovereign rights as against the other."

"A civil war is never solemnly declared; it becomes such by its accidents—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against the former Sovereign, the world acknowledges them as belligerents, and the contest as a war."

"A civil war," says Vattel, "breaks the bonds of society and Government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as constituting, at least for a time, two separate bodies—two distinct societies. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms."

"As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its actual existence is a fact in our domestic history which the Court is bound to notice and to know. The true test of its existence, as found in the writings of the sages of the common law, may be thus summarily stated: "When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the Courts of Justice cannot be kept open, *civil war exists*, and hostilities may be prosecuted on the same footing as if those opposing the Government were foreign enemies invading the land."

"By the Constitution, Congress alone has the power to declare a national or foreign war. It cannot declare war against a State, or any number of States, by virtue of any clause in the Constitution. The Constitution confers on the President the whole executive power. He is bound to take care that the laws be faithfully executed. He is Commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States. He has no power to initiate or declare a war either against a foreign nation or a domestic State. But by the Acts of Congress of the 28th February, 1795, and 3rd March, 1807, he is authorized to call out the militia, and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the Government of a State or of the United States.

"If a war be made by invasion of a foreign nation, the President is not only authorized, but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be 'unilateral.' Lord Stowell (1 Dodson, 247) observes, 'It is not the less a war on that account, for war may exist without a declaration on either side.' It is so laid down by the best writers on the law of nations. A declaration of war by one country only is not a mere challenge to be accepted or refused at pleasure by the other."



"This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it presented itself without waiting for Congress to baptise it with a name, and no name given to it by him or them could change the fact.

"It is not the less a civil war, with belligerent parties in hostile array, because it may be called an 'insurrection' by one side, and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted province or State be acknowledged in order to constitute it a party belligerent in a war according to the law of nations. Foreign nations acknowledge it as war by a declaration of neutrality. The condition of neutrality cannot exist unless there be two belligerent parties. In the case of the 'Santissima Trinidad' (7 Wheaton, 337), this Court says: 'The Government of the United States has recognized the existence of a civil war between Spain and her Colonies, and has avowed her determination to remain neutral between the parties. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign right of war.'

"The law of nations is also called the law of nature; it is founded on the common consent, as well as the common sense, of the world. It contains no such anomalous doctrine as that which this Court are now for the first time desired to pronounce, to wit, that insurgents who have risen in rebellion against their Sovereign, expelled her Courts, established a revolutionary Government, organized armies, and commenced hostilities, are not *enemies* because they are *traitors*; and a war levied on the Government by traitors, in order to dismember and destroy it, is not a *war* because it is an 'insurrection.'

"Whether the President, in fulfilling his duties as Commander-in-Chief in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions, as will compel him to accord to them the character of belligerents, is a question to be decided by him, and this Court must be governed by the decisions and acts of the political departments of the Governments to which this power was entrusted. He must determine what degree of force the crisis demands. *The proclamation of blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case.*"

The course of Her Majesty's Government followed the course of events in America.

It appears by the "Times" of 3rd May, 1861, that I stated in the House of Commons on the preceding day (2nd May), "Her Majesty's Government heard the other day that the Confederate States have issued letters of marque, and to-day we have heard that it is intended there shall be a blockade of all the ports of the Southern States."

On the 6th of May, I stated in the House of Commons the intention of the Government, formed after due deliberation, to recognize the Southern States as belligerents.

On the 10th May, I received a despatch from Lord Lyons making the following announcement, "I have the honour to inclose copies of a proclamation of the President of the Southern Confederacy inviting application for letters of marque,

and also a proclamation of the President of the United States declaring that Southern privateers will be treated as pirates, and announcing a blockade of the Southern ports."

Thereupon the intention of Her Majesty's Government previously announced was carried into effect, and the Proclamation of the 13th May, 1861, was issued.

It is very remarkable that an English schooner, the "Tropic Queen," was captured for a breach of blockade, consisting in the act of lading her cargo on the 13th and 14th of May, 1861.

The offence in this case was committed on the very day that the Queen acknowledged the existence of civil war. The court in giving judgment referred to the notorious facts of the secession of the Southern States, and proceeded thus:—

"These facts, as set forth by the President, with the assertion of the right of blockade, amount to a declaration that civil war exists. *Blockade itself is a belligerent right, and can only legally have place in a state of war,*" &c.

What you contend for, I imagine, both as to commencement of the war and as to its close, is that the United States of America had a full claim to exercise all the rights of belligerents, but that Great Britain had no just claim to exercise any of the rights of neutrals.

This position, however, Great Britain never can permit.

Recognitions by the United States of belligerent rights belonging to insurgents have been frequent: Buenos Ayres, Colombia, Mexico, have been acknowledged by the United States to have belligerent rights against Spain; Brazil and Artigas against Portugal; Texas against Mexico. But in no case have these insurgent forces sprung up at once fully armed to the amount of five millions of men.

With respect to the "Oreto" and the "Alabama," I have only again to repeat that up to the time when the "Oreto" left these shores, and up to the day when the "Alabama" escaped on a false pretence, the Law Officers of the Crown had not by any legal opinion enabled Her Majesty's Government to give any orders for the detention of these vessels.

I entirely concur with you that there was no use in giving orders on the 31st of July for detaining a vessel which had made its escape on the 29th. But up to the 29th the Law Officers had not thought the evidence sufficient to justify detention; but I cannot by any means admit that you seem to insinuate, that the Law Officers were deficient either in knowledge of the law or in willingness to apply it. Her Majesty's Government fully accept the responsibility of their opinions.

And it will be observed that the Law Officers, in addition to the reports of the Custom-house officers, were in possession of all the information which it was in your power to furnish.

You allude to the case of the American revolution, and the conduct of France in not recognizing the belligerent rights of the insurgents then in rebellion against the British Crown.

Let us extend our view somewhat wider. There have been, in the period beginning in 1765 and ending in 1865, three cases of a somewhat similar kind.

The first is that of the American Revolution; the second is that of the revolt of the South American Republics; the third is that of the civil war which from 1861 to 1865 desolated the United States of North America.

In the first case the Court of France sought only to injure Great Britain.

In this spirit, in 1776, before the declaration of independence, the French Government put itself in connexion with Arthur Lee through Caron de Beaumarchais, and with Benjamin Franklin through Dubourg, offering to the United States the supplies they needed. When, however, the news of Burgoyne's surrender reached France, the French Government took a more decided course. In February 1778 they signed two Treaties, one of commerce and one of alliance, with the United States of America. Nor were the motives of these acts on the part of Louis XVI by any means concealed.

M. Gerard was ordered to declare on the King's part to Arthur Lee and Silas Deane, the Commissioners of the United States, "that His Majesty was fixed in his determination not only to acknowledge, but to support our independence by every means in his power: that in doing this he might probably soon be engaged in a war, with all the expenses, risks, and damages usually attending it; yet he should not expect any compensation from us on that account, nor pretend that he acted wholly for our sakes; since besides his real goodwill, it was manifestly the interest of France that the power of England should be diminished by our separation from it."<sup>\*</sup>

I am not arguing whether this conduct was justifiable; I am only showing that France in the American war took a part hostile to Great Britain, in order to promote her own interests.

In the same spirit, in order to promote the interests of France, and injure those of Great Britain, the Government of Louis XVI, two years after the declaration of independence, made an alliance offensive and defensive with the United States.

Such conduct, however it may be excused or even admired in Europe or in America, could not form a precedent for Great Britain in the late civil war. Her Majesty's Government had no wish to favour the separation of the Southern States, with a view to injure the power or check the progress of the United States. It has been the wish of Her Majesty's Government, who had received no injury from either the Northern or the Southern States, and was living in amity with both, when hostilities of the most violent character commenced between them, to preserve an honest and impartial neutrality.

The next case to which we have looked has been the insurrection of the South American Republics against Spain, and of the Empire of Brazil against Portugal.

This insurrection began slowly and partially at Buenos Ayres on the 14th of May, 1810, by the formation of a Junta and the deposition of the Viceroy; the Government, however, being carried on in the name of the King of Spain until January, 1813, when a provisional Government was established. On the 9th of July, 1816, the provinces of the Rio de la Plata issued a declaration of independence, and on the 20th of April, 1819, a Constitution was published by the Congress.

In 1811 the insurrection commenced in Paraguay, the Spanish Governor was deposed, and a Government established under the direction of Dr. Francia. On the 12th of October, 1813, a Constitution was proclaimed.

In 1811, civil war commenced in Chile, but the Declaration of Independence was not issued until the 12th of February, 1818, and the war continued until 1820.

<sup>\*</sup> See "Diplomacy of the Revolution." By William Henry Trescott: New York, 1852.

The revolution in Peru commenced in 1821, a Declaration of Independence being issued on the 15th of July, 1821, and the war continuing until 1824.

On the 15th of September, 1821, Guatemala declared her independence, which, however, was not finally established until the 1st of July, 1823.

The revolution in Columbia (including Venezuela, Equator, and New Grenada) commenced April 19, 1810, at Caracas. On the 5th of July, 1811, the Congress declared Colombia an independent State, but the war with Spain continued until November, 1823.

In 1815 the President of the United States allowed belligerent rights to the South American States, and proclaimed a strict neutrality. This Proclamation was recognized by the Supreme Court and other Tribunals of the United States as the guide for their decisions.

It is here that Her Majesty's Government have looked for precedents. The United States had been from 1793 to 1815, with the exception of two years, neutrals amid the great wars of Europe. Their wisest Statesmen and their most learned Judges had studied the Law of Nations profoundly with a view to extract from that law the rules for their own conduct, and the elements of their judgment on the conduct of others.

In 1794 the United States' Government had admitted the principle that, if after prohibiting the equipment and armament of cruisers in American ports, they abstained from using the means in their power to restore prizes captured and brought into United States' ports by cruisers subsequently equipped or armed in those ports in violation of the prohibition, they were bound to give compensation for such prizes; but they appear to have limited their admission of liability to that particular class of cases.

When, therefore, the Continent upon which they have erected a free and powerful State was convulsed with civil war, the President, Secretaries of State, Chief Justices, and other Judges of the United States, doubtless considered maturely the course they were bound to pursue.

You seem to have supposed that my meaning in reference to Portugal was that the United States in that case had been in the wrong; and therefore if Great Britain had been wrong in the present instance, the United States could not reproach us. But no such argument entered into my conception. My argument was this:—

Portugal, during the war of South American independence, complained of captures by American vessels of war built in the United States, which had not been detained and seized and condemned in the ports of the United States.

The answer of Mr. Adams to these complaints was, as I conceived, valid and conclusive. He said in effect, "Had you been able to prosecute and convict in the United States, our Courts were open to you, and every facility was afforded you. But you cannot make the Government of the United States responsible for the acts of men on the high seas over whom the United States exercise no jurisdiction."

Having repeated the very terms used by Mr. Adams, I say, "To this most just principle, which was again referred to by Mr. Secretary Clayton, and maintained against the Government of Portugal to this hour, the Government of the United States must be held still to adhere." In fact, there was no motive to bias their judgment on this bloody controversy. Spain and Portugal, weakened by bad Government, and exhausted by recent struggles for existence, could inspire no apprehension, and offer no temptation to the

rising and vigorous power of the Great Western Republic. The conduct of the United States Government, therefore, is eminently deserving of our study, and, I may add, of our respect.

But as you have commented at some length on the treatment of Portugal by the United States during the war of South American independence, I will enter more fully than I had before done into that question.

The correspondence to which I refer began in December 1816, and closed with a letter of the Portuguese Minister in November 1850. It cannot be pretended that the reclamations of a friendly Power extending over thirty-four years did not receive the gravest attention of the American Government.

In his first letter the Portuguese Envoy at Washington complains that Mr. Taylor of Baltimore, an American citizen, had directed Captain Fish, of the "Romp," an American ship, to cruise as a privateer under the insurgent colours of Buenos Ayres against the subjects of Portugal.

He adds, "The 18th of last month (November) the frigate 'Clifton,' Captain Davy, armed with thirty-two guns of various calibres, and a crew of 200 men, sailed from Baltimore for Buenos Ayres. This ship anchored below that port, where it has remained for about a fortnight or more waiting for the American ship 'Independence of the South,' armed with sixteen guns, and for the ships 'Romp,' 'Tachahoe,' 'Montezuma,' and 'Spanker,' and two others newly constructed, which were fitting with great activity and which had not yet got names. All were to sail together to cruise in the Eastern and Western Seas of South America, under the insurgent colours of Buenos Ayres. No doubt can be entertained of their instructions being the same as those of Captain Fish, and that they will act hostilely against Portuguese ships.

The Portuguese Envoy, Joseph Correa de Serra, prays for an amendment of the law of the United States, with a view to render it more efficient in such cases. A law having been passed by Congress for this purpose, the Portuguese Envoy, in May, 1817, requests that the President will desire the United States officers on the outposts to use greater vigilance.

In March, 1818, he complains that three Portuguese ships have been captured "by privateers fitted in the United States, manned by American crews, and commanded by American captains, though under insurgent colours."

In October of the same year the Portuguese Envoy complains that the Portuguese prize is fitting in the Patuxent to cruise against Portuguese commerce.

In November of the same year the Portuguese Minister states to Mr. Adams that, obliged by his duty to inquire into the nature of the armed ships that had of late insulted the flag of his Sovereign, and committed incalculable depredations on the property of his subjects, he had found, to his sorrow, multiplied proofs that many of them were owned by citizens of the United States, and had been fitted in the ports of the Union. He goes on to complain of the difficulties in the way of prosecutions, but compliments the President on his "honourable earnestness."

In December of the same year the Portuguese Minister complains of the armed vessel "Irresistible," which had been committing "depredations and unwarrantable outrages on the coast of Brazil." He says, it is proved by depositions that John Daniels, the commander of the ship, is an American, and all the crew are Americans. He prays that, if the ship should come into an American port, means may be taken to bring the said captain and

crew within reach of the laws made to punish such scandalous proceedings.

In March, 1819, M. Correa de Serra states, as Minister of his Sovereign, that Artigas, whose flag is frequently waving in the port of Baltimore, and which is carried by Portuguese prizes in the ports of the Union, has been expelled far from the countries which could afford him the power of navigating, and has not a foot length of sea-shore in South America where he can show himself. He prays that the Artigan flag may be declared illegal.

In November 1819, after expressing his gratitude for the proceedings of the Executive, the same Minister complains that the evil is rather increasing. He is in possession of "a list of fifty Portuguese ships, almost all richly laden, some of them East Indiamen, which had been captured during a period of profound peace. One city alone on the coast of the United States had twenty-six armed ships which preyed on Portuguese commerce, "and a week ago three armed ships of this kind were in that port waiting for a favourable occasion for sailing on a cruise."

In June, 1820, the Portuguese Minister complains that a Portuguese prize had been sold by auction at Baltimore to Captain Chase (a notorious privateersman), and was to be immediately fitted out as a privateer to cruise against the Portuguese Indiamen.

In July of the same year, the Portuguese Minister sends a list of "the names and value of nineteen Portuguese ships and their cargoes, taken by private armed ships, fitted in the ports of the Union by citizens of those States." His Sovereign wishes the affair to be treated with that candour and conciliating dignified spirit which becomes two Powers who feel a mutual esteem, and have a proper sense of their moral integrity. "In this spirit I have the honour to propose to this Government to appoint Commissioners on their side, with full powers to confer and agree with His Majesty's Ministers on what reason and justice demand."

In December, 1820, the Chevalier Amado Grehon transmitted to Mr. Adams a copy of twelve claims, with the value of the ships, desiring him to add them to the list furnished by the Chevalier Correa de Serra.

In April, 1822, the same Minister repeats the proposal made in July, 1820, "of having recourse to Commissaries chosen by both Governments for the purpose of arranging the indemnities justly due to Portuguese citizens for the damage which they have sustained by reason of piracies supported by the capital, and the means of citizens of the United States; an essential condition which, in this way repairing the past, secures also the future."

On the 25th of May, 1850, the Chargé d'Affaires of Portugal writing to the Secretary of States of the United States declares, "The Undersigned is authorized to come to an understanding with the new Secretary of State upon the subject, and to submit the voluminous documents and papers in his possession to the joint examination and decision of the Commissioners or Arbitrators appointed by the American Government on the one part, and the Undersigned on behalf of Her Majesty's Government on the other," &c.

Having thus related the complaints of the Portuguese Government during the years which elapsed from 1816 to 1822, and from 1822 to 1850, I will now give from the organs of the United States the answers which that Government gave to these solemn and reiterated complaints.

In March, 1817, the Secretary of State transmitted to the Portuguese Minister at Washington an Act of Congress passed on the 3rd of that month to preserve more effectually the neutral

relations of the United States. On the 14th of March, 1818, in answer to a letter complaining of the capture of three Portuguese ships by privateers, Mr. Adams says:—

"The Government of the United States having used all the means in its power to prevent the fitting out and arming of vessels in their ports to cruise against any nation with whom they are at peace, and having faithfully carried into execution the laws enacted to preserve inviolate the neutral and pacific obligations of this Union, cannot consider itself bound to indemnify individual foreigners for losses by captures, over which the United States have neither control nor jurisdiction. For such events no nation can in principle, nor does in practice, hold itself responsible. A decisive reason for this, if there were no other, is the inability to provide a tribunal before which the facts can be proved.

"The documents to which you refer must of course be *ex parte* statements, which in Portugal or in Brazil, as well as in this country, could only serve as a foundation for actions in damages, or for the prosecution and trial of the persons supposed to have committed the depredations and outrages alleged in them. Should the parties come within the jurisdiction of the United States, there are courts of Admiralty competent to ascertain the facts upon litigation between them, to punish the outrages which may be duly proved, and to restore the property to its rightful owners should it also be brought within our jurisdiction, and found, upon judicial inquiry, to have been taken in the manner represented by your letter. By the universal law of nations the obligations of the American Government extend no further."

The Secretary of State in subsequent letters promises to prosecute in the United States' Courts persons chargeable with a violation of the laws of the United States in fitting out and arming a vessel within the United States for the purpose of cruising against the subjects of the Queen of Portugal.

To the proposal to appoint Commissioners made in July, 1820, the United States' Secretary of State, on the 30th of September of the same year, replies as follows:—

"The proposal contained in your note of the 16th of July last has been considered by the President of the United States with all the deliberation due to the friendly relations subsisting between the United States and Portugal, and with the disposition to manifest the undeviating principle of justice by which this Government is animated in its intercourse with all foreign Governments, and particularly with yours. I am directed by him to inform you that the appointment of Commissioners to confer and agree with the Ministers of His Most Faithful Majesty upon the subject to which your letter relates, would not be consistent either with the Constitution of the United States, nor with any practice usual among civilized nations."

He proceeds to say:—

"If any Portuguese subject has suffered wrong by the act of any citizen of the United States, within their jurisdiction, it is before those tribunals that the remedy is to be sought and obtained. For any acts of citizens of the United States, committed out of their jurisdiction and beyond their control, the Government of the United States is not responsible.

"To the war in South America, to which Portugal has for several years been a party, the duty and the policy of the United States has been to observe a perfect and impartial neutrality."

The same reply is again given to Chevalier

Amado Grehon in a letter dated the 30th of April, 1822:—

"I am at the same time directed to state, that the proposition of the Chevalier Correa de Serra, in his note of the 16th of July, 1820, for the appointment of Commissaries chosen by both Governments to arrange indemnities claimed by Portuguese citizens for damages stated by them to have been sustained by reason of piracies supported by the capital and means of citizens of the United States, cannot be acceded to. It is a principle well known and well understood that no nation is responsible to another for the acts of its citizens, committed without its jurisdiction and out of the reach of its control."

The policy of the United States is further explained in a despatch of Mr. Secretary Adams to General Dearborn, dated the 25th of June, 1822. It is there set forth, that in the critical state of the relations of the two countries, it is necessary to employ the agency of a person fully qualified to represent the interests of the United States. It is affirmed, that whenever Portuguese captured vessels have been brought within the jurisdiction of the United States, decrees of restitution have been pronounced.

In referring, however, to the lists of captures, and the demand of a joint Commission to determine and assess the damages to be paid by the United States, the former refusal was thus repeated: "As there was no precedent for the appointment of such a Commission under such circumstances and as not a single capture had been alleged for which the United States were justly responsible, this proposal was of course denied; and nothing further was heard upon the subject until the 1st of April last, when a note was received from the present Chargé d'Affaires of Portugal, leading to a correspondence, copies of which are now furnished you."

The correspondence seems not to have been resumed till 1850, when, as has been shown, the demand for a Commission was repeated.

The Secretary of State of the United States thereupon gave this summary and final answer, dated May 30, 1850:—

"The Undersigned is surprised at the re-appearance of these obsolete reclamations, accompanied by the renewal of the ancient proposition to appoint a joint Commission to determine and assess damages, a proposition which was rejected at the time upon substantial grounds; and without the Minister's assurance to that effect, the Undersigned would not have supposed it credible that Portugal seriously cherished any intention to revive them. In reply, therefore, to the note which the Minister of Her Most Faithful Majesty has presented in the name of his Government, the Undersigned must now, by the President's order, inform him that he declines re-opening the proffered discussion."

This Despatch is signed "John M. Clayton."

A long and able despatch of the Portuguese Minister at Washington, recapitulating all the grievances of Portugal, dated November 7, 1850, does not appear to have received an answer.

The practice of the United States' Courts during this war of South American Colonies against Spain and Portugal, seems to have been confined to the restitution of prizes actually brought into the ports of the United States. The doctrine of the Courts of Justice upon the subject was thus laid down by Justice Story; in pronouncing the decision of the Supreme Court in the case of the "Amistad de Rues" (5 Wheaton, p. 388). Speaking of the cases of damages, he says:—"When called upon by either of the belli-

gerents to act in such cases, all that justice seems to require is that the neutral nation shall fairly execute its own laws, and give no asylum to the property unjustly captured. It is bound, therefore, to restore the property, if found within its ports; but beyond this, it is not obliged to interpose between the belligerents. If, indeed, it were otherwise, there would be no end to the difficulties and embarrassments of neutral Prize Tribunals. They would be compelled to decide in every variety of shape upon marine trespasses, *in rem* and *in personam* between belligerents, without possessing adequate means of ascertaining the real facts, or of compelling the attendance of foreign witnesses, and thus they would draw within their jurisdiction almost every incident of prize. Such a course of things would necessarily create irritations and animosities, and very soon embroil neutral nations in all the controversies and hostilities of the conflicting parties. Considerations of public policy come, therefore, in aid of what we consider the law of nations on this subject; and we may add that Congress, in its legislation, has never passed the limit that is here marked out."

To the same effect is the doctrine laid down by the Supreme Court in the case of the brig "Alerta":\*—

"A neutral nation may, if so disposed, without a breach of her neutral character, grant permission to both belligerents to equip their vessels of war within her territory. But without such permission the subjects of such belligerent Powers have no right to equip vessels of war, or to increase or augment their forces, either with arms or with men, within the territory of such neutral nation. Such unauthorized acts violate her sovereignty and her rights as a neutral. All captures made by means of such equipments are illegal in relation to such nation, and it is competent to her Courts to punish the offenders, and, in case the prizes taken by her are brought *infra præsidia*, to order them to be restored."

In comparing the course pursued by the Government and Congress of the United States in the case of the South American Civil War, with that pursued by Her Majesty's Government in the case of the North American Civil War, the following differences are perceptible:—

The number of vessels built and fitted out in American ports which successfully evaded the provisions of the laws made to restrain them, and proceeded to cruise against Portuguese commerce was very great: those which escaped the execution of the similar laws of Great Britain were very few. In the former case these illegal cruisers must have been thirty or forty; in the latter, three or four.

In the case of the South American Civil War the cruisers in question were generally commanded by citizens of the United States, and navigated by crews of the neutral nation: in the case of the North American Civil War, no English captain appears to have commanded a cruiser; and the crews were generally, though not altogether, from the States in insurrection.

But there is one essential point on which the United States and Great Britain appear entirely to agree. The United States when neutral refused to be responsible for captures at sea not brought within their jurisdiction, or to listen to a proposal to appoint a Commission to assess damages; the Government of the United Kingdom have taken a similar course.

It is true that in applying the principle there has been a divergency of practice. The United States admitted the prizes to their harbours, but restored them, if practicable, when called upon by the Decrees of Courts of Law to their owners. The Government of Great Britain refused admission altogether to such prizes.

The principle is the same, and it is hardly worth while to dispute which course was most inconvenient to the insurgent cruisers. It appears to me, I confess, that the course pursued by Her Majesty's Government tended more effectually to discourage insurgent cruisers than that pursued by the United States.

But as to the principal involved, let me ask you, supposing a merchant or passenger vessel belonging to the United States were to go to the Coast of Madagascar, and were there to meet a ship from Boston with cannon and muskets, and the merchant ship being then armed were to take part against Brazil in the war between Brazil and Paraguay;—let me ask, I say, whether your Government would think themselves bound to afford reparation to Brazil for all the captures made by that ship? Yet such is the case of the "Shenandoah."

It seems to Her Majesty's Government that if the liability of neutral nations were stretched thus far, this pretension, new to the law of nations, would be most burthensome, and, indeed, most dangerous.

A maritime nation whose people occupy themselves in constructing ships and cannon and arms might be made responsible for the whole damages of a war in which that nation had taken no part.

I am thankful, therefore, to Mr. Adams for having in 1818, 1820, and 1822 shielded maritime Powers by his conclusive argument from such alarming liabilities.

You say, indeed, that the Government of the United States altered the law at the urgent request of the Portuguese Minister.

But you forget that the law thus altered was the Law of 1794, and that the Law of 1818 then adopted was, in fact, so far as it was considered applicable to the circumstances and institutions of this country, the model of our Foreign Enlistment Act of 1819.

Surely, then, it is not enough to say that your Government, at the request of Portugal, induced Congress to provide a new and more stringent law for the purpose of preventing depredations, if Great Britain has already such a law. Had the Law of the United States of 1818 not been already in its main provisions adopted by our Legislature, you might reasonably have asked us to make a new law; but surely we are not bound to go on making new laws, *ad infinitum*, because new occasions arise.

The fact is, this question of a new law was frequently discussed, but the conclusion arrived at was that, unless the existing law after a sufficient trial should be proved to be practically inadequate, the object in view would not be promoted by any attempt at new legislation. The existing law has, in fact, not proved inadequate, when circumstances of strong suspicion have been so far established as to justify the Government in ordering the detention of the suspected vessels, and it is by no means certain that any possible alteration of the law would enable more to be done in the way of prevention than this. That power was exercised in the case of the Rams in the Mersey, and of the "Canton" or "Pampero" in the Clyde; and in neither case has the power exercised been censured or revoked either in a court of law or by any vote of Parliament.

\* Curtis' "Reports," vol. iii, p. 382.

If it be said, as some persons of high authority in Parliament have said, that the executive Government of the United Kingdom exercised in these cases an illegal power, my answer is, that whatever force such an argument might have in a court of law or in Parliament, it can have none in the mouth of a Secretary of State of the United States. For whether exercised legally or illegally, the power was equally effective in protecting the commerce and the harbours of the United States against ships built and equipped in British ports.

With respect to orders to refuse entrance into our ports to all ships partly fitted up in the United Kingdom for the service of the Confederates, there was extreme difficulty in giving any such orders.

During the South American Civil War, it was found practicable to bring to New York or Boston, witnesses to prove that a South American cruizer had been built and armed in Baltimore. But to carry witnesses from Liverpool to Nassau or Jamaica to prove the building of the "Alabama" at Birkenhead would have been a fruitless effort.

To produce copy of a conviction of the "Alabama" was impossible, as she had escaped conviction by flight; to carry witnesses to the Cape of Good Hope, to Melbourne, and elsewhere, for the purpose of showing that her owners had violated the Foreign Enlistment Act, was equally out of the question.

No less impracticable would it have been to say to our Governors, "You may admit the 'Alabama,' you may admit the 'Stonewall,' but you must not admit the 'Florida.'"

In your letter of the 23rd of October, 1863, you were pleased to say that the Government of the United States is ready to agree to any form of arbitration.

Her Majesty's Government have thus been led to consider what question could be put to any Sovereign or State to whom this very great power should be assigned.

It appears to Her Majesty's Government that there are but two questions by which the claim of compensation could be tested. The one is: Have the British Government acted with due diligence, or, in other words, with good faith and honesty, in the maintenance of the neutrality they proclaimed? The other is: Have the Law Officers of the Crown properly understood the Foreign Enlistment Act when they declined, in June, 1862, to advise the detention and seizure of the "Alabama," and on other occasions when they were asked to detain other ships building or fitting in British ports?

It appears to Her Majesty's Government that neither of these questions could be put to a foreign Government with any regard to the dignity and character of the British Crown and the British nation.

Her Majesty's Government are the sole guardians of their own honour. They cannot admit that they may have acted with bad faith in maintaining the neutrality they professed. The Law Officers of the Crown must be held to be better interpreters of a British Statute than any foreign Government can be presumed to be. Her Majesty's Government must therefore decline either to make reparation and compensation for the captures made by the "Alabama," or to refer the question to any foreign State.

Her Majesty's Government conceive that if they were to act otherwise, they would endanger the position of neutrals in all future wars.

Her Majesty's Government are, however, ready to consent to the appointment of a Commission to

which shall be referred all claims arising during the late civil war, which the two Powers shall agree to refer to the Commissioners.

I cannot conclude without taking this opportunity to ask you to join with Her Majesty's Government in rejoicing that the war has ended without any rupture between two nations which ought to be connected by the closest bonds of amity.

The Government of the United States have carried on to a successful issue, with great fortitude and perseverance, a civil war of unequalled magnitude.

In the course of this war they have resolved to abolish slavery. The British nation have always entertained, and still entertain, the deepest abhorrence of laws by which men of one colour were made slaves of men of another colour. The efforts by which the United States' Government and Congress have shaken off slavery, have, therefore, the warmest sympathies of the people of these Kingdoms.

The same sympathies will accompany the President and Congress of the United States in endeavouring to reorganize the Southern States on the basis of equal freedom.

Nor is there any question in dispute which seems likely to disturb the friendship of two nations which, the one in Europe, and the other in America, are distinguished for their love of liberty. Let our two nations, therefore, instead of captious discussions, respect the honour and believe in the friendly intentions of each other. In this manner we may preserve unbroken the ties of peace, and exercise a beneficial influence on the future destinies of the nations of the world.

I am, &c.,

(Signed) RUSSELL.

CONFIDENTIAL.

Mr. Adams to Earl Russell.—(Received September 19).

Legation of the United States,

London, September 18, 1865.

MY LORD,  
I have had the honour to receive your note of the 30th of last month, in reply to mine of the 20th of May last.

It gives me great satisfaction to be the medium of communicating to my Government the very friendly assurances of your Lordship. I cannot entertain a doubt that they will be fully appreciated.

In respect to the reference which you have done me the honour to make to me, as having at no time entertained a doubt of the intentions of Her Majesty's Ministers to maintain amicable relations with my Government during the late severe struggle in my country, I am happy to believe that your Lordship has not essentially misunderstood my sentiments. At the same time that I cheerfully confirm such declarations as may have been made by me on that subject in the correspondence I have heretofore had the honour to hold with your Lordship, I trust I may be permitted to claim, on behalf of my own Government, the credit of intentions to the full as amicable. Indeed, without the presence of these elements on both sides, I should have despaired of the possibility of the passage of the two nations in safety through the difficulties presented to them from within, as well as from without.

But whilst I am prompt to respond to your Lordship in the sense attributed to me, I pray

permission to guard myself against an inference that might by possibility be drawn from a portion of your language, prejudicial to my maintenance of the course which my Government has seen fit to take in regard to the events which have given rise to the present discussion. Whilst doing the fullest justice to the intentions of Her Majesty's Ministers, I feel equally bound to preclude the supposition that I have ever been satisfied with the measure in which, on too many occasions, they have contented themselves with carrying these intentions into practice. Inasmuch as the relations between nations, not less than between individuals, must depend upon the mode in which they fulfil their obligations towards each other rather than upon their motives, the questions which have grown out of the events of the late war appear to lose little of their gravity from any reciprocal disavowal, however complete, of ill-will on the part of the respective Governments.

I am happy to concur with your Lordship in the opinion that this appears to be a favourable moment for a calm and candid examination of these questions.

Were it not for this consideration I should abstain from further discussion, and content myself with simply transmitting to my Government the conclusion to which Her Majesty's Ministers have arrived, as communicated to me towards the close of your Lordship's note.

But entertaining as I do a strong impression that in the matter now at issue is involved a question of international comity, based upon grave principals of morals, of universal application, the decision upon which is likely to have a very wide bearing upon the future relations of all civilized nations, and especially those most frequenting the high seas, I feel myself under the necessity of placing upon record the views of it held by the Government which I have the honour to represent, at least to the extent to which the period of my service at this post has enabled me to do them but feeble justice.

In the note which I had the honour to address to your Lordship on the 20th of May last, when recapitulating, in the form of propositions, the argument which made the basis of certain reclamations upon Her Majesty's Government, I submitted, first of all, "that the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas, before they had a single vessel afloat, was precipitate and unprecedented."

To this affirmation I understand your Lordship now to reply, by candidly admitting the truth of at least one-half of it. In pleading in justification that the insurrection which caused it was unprecedented, you certainly concede that the recognition was so likewise.

It may then be hereafter assumed, as a fact beyond dispute, that no similar act was ever done by one nation towards another with which it was in amity.

With regard to the other term which I took the liberty to use, the word "precipitate," I beg leave to call your Lordship's attention to the ground upon which you proceed to justify the act of recognition. You are pleased to observe that it "followed and did not precede our own declaration of the intended blockade of six or seven considerable ports, and the declaration of an intention on the part of the Confederates to issue letters of marque."

Now, I pray you particularly to note that, if this be the whole case made, your Lordship has gone the length of conceding that Her Majesty's Government actually adopted this

most grave proceeding without the evidence in its possession of any fact whatever upon which to rest it. The statement is simply that a declaration of intentions to act had been made by the respective parties preparing for a struggle.

Hence I feel constrained respectfully to submit it to your Lordship whether in the history of civilized nations there can be found a single instance in which a step of such importance was ever taken by one friendly Government in regard to another, upon a mere presumption of what was going to be done, an assumption of certain acts contemplated, but not performed. It would appear to be the part of calm statesmanship, in cases which cannot fail deeply to affect the interests of a friendly nation, to postpone acting at least until something shall have been actually done to require it. In this instance, there was no certainty, at the time when Her Majesty's Government acted, that either of those declarations of intention would be fulfilled. The result proves that one of them, in point of fact, never was executed. Neither is it all beyond the possibility of belief that the other would have been equally left incomplete, but for this very action of Her Majesty's Government, which precluded all chance of avoiding to have recourse to it. The actual blockade then, so far from being a cause, became actually an inevitable consequence of its policy. With the reluctance of my Government to resort to that measure, and the causes which overcame it, your Lordship must have been too fully acquainted at the time to render it necessary for me to dwell upon this matter farther.

As a still stronger proof of the precipitate nature of that declaration, if any were needed, I pray permission only to refer to your published letter to Lord Lyons, written on the very day the announcement of the step taken by the Government was made by yourself in the House of Commons, the 6th of May, 1861. In that letter your Lordship freely admits that, by reason of the interruption of the communication between New York and Washington, you had not then any information of the precise measures actually taken down to that moment by either of the parties in the struggle "which appeared to have commenced."

Yet in spite of these circumstances, which deprived Her Majesty's Government of all accurate knowledge of the facts, and notwithstanding that there was no apparent cause in any event that had occurred, urgently demanding an immediate decision, it was determined to adopt this step at this time; a step which, however intended, could not, just at the beginning of an undertaking to sap by violence the established authority of a friendly Power, fail to have an influence injurious to the maintenance of that authority and favourable to its overthrow. Considering the nature of the friendly intentions which your Lordship is pleased to take credit for, and in which I fully believe, the very best excuse which I can imagine for this proceeding is that it was precipitate. I should be sorry to be led to the natural inference that would follow my admitting it to have been done with deliberate premeditation. I therefore must respectfully persist, notwithstanding your Lordship's reluctance, in the opinion that I have not failed to give it the epithet which most fittingly belongs to it.

But your Lordship in your note is pleased to justify this extraordinary "unprecedented and precipitate" step on another ground. This is the "magnitude" of the appearance of the insurrec-

tion. This certainly corresponds with my impression of the reasoning which you assign to me in the first conversation which I had the honour to hold with you after my arrival in this country, the 18th of May, 1861. This view is now amplified in the form of the propositions Nos. 1 and 2 with which your Lordship has now favoured me.

"1. That the history of modern nations affords no example of an insurrection against a Central Government so widely extended, so immediate in its operation, so well and so long prepared, so soon and so completely furnished with the machinery of Civil Government, a national representation, Generals and officers of high military reputation, armies fully equipped, and fortifications recently in possession of the established Government.

"2. That intelligence reached Her Majesty's Government in the spring of 1861, that seven combined States had declared in favour of this insurrection; that three more States, including the great and powerful State of Virginia, were preparing to join them; that these States commanded upwards of 3,000 miles of sea-coast; that they comprised more than 5,000,000 of people, exclusive of the negro slaves; that the President of the insurgent Government had proclaimed his intention of issuing letters of marque and reprisal; that the President of the United States, on the other hand, had proclaimed his intention to establish a blockade of all the ports of the Southern States; and that in these circumstances the Commander of Her Majesty's naval forces on the North American Station earnestly solicited instructions for his guidance."

In respect to this, may I be permitted to beg your attention to the fact that, with perhaps the exception of the gross number of the people engaged, I do think myself able to furnish an example of an insurrection in every particular corresponding to your description, which has occurred within the last century. I do not doubt that my allusion will at once be understood by your Lordship without another word.

Yet, notwithstanding all the points of identity in that case, I cannot find that Her Majesty's Government was met at the outset in 1774, with any announcement, by a foreign power in amity with Great Britain, of a necessity immediately to recognize the insurgents as a belligerent power, because of the magnitude of the struggle, or for any other cause. Neither is there the smallest ground for believing that it would have tolerated the proceeding for one moment, if it had been.

Her Majesty's Government at once resorted without scruple or hesitation to every right ordinarily exercised by a belligerent in a war with a strong power, and was met with a degree of resistance more effective and enduring than any manifested in the late struggle. That resistance too was carried out on the ocean, where alone the interests of distant neutral States are liable to be seriously affected by the domestic strife of any nation, in a manner far more extensive than the late insurgents by their unaided efforts ever could have attempted. Yet a length of time elapsed before any foreign power, however much inclined, ventured to find in this state of things any reason for considering the people waging such a war as a belligerent power. It furthermore is certain, that if at any time the smallest indication of a leaning that way manifested itself in any of the commercial Powers, it was immediately noted by the British Government for remonstrance and reclamation.

Your Lordship has been pleased to review the conduct of France in this emergency; and to

endeavour to set aside the parallel which I attempted in my note, on the ground that that country was animated by a policy decidedly hostile to Great Britain. The fact is doubtless so. But it so happens that this only bears with the more force in my favour on the present argument. Had France, being inclined to injure Great Britain, decided to recognize the insurgents as a belligerent, it would, according to the doctrine now avowed by Her Majesty's Government, have been doing no more than was absolutely necessary and altogether justifiable. Why did it not take this step at once? Unhappily for the example, Great Britain at the outset insisted upon considering her as a friendly Power, and called upon her solemnly to desist from any attempt whatever to recognize the presence of the insurgent force. In proof of this, I beg permission to quote a brief extract from an historical writer well known to have drawn his statements from official sources. Mr. Adolphus says, that in April, 1775, that is, one year after the outbreak of the insurrection, "the friendly disposition of the French Government towards Great Britain has been unequivocally demonstrated; and the expectation that success would be afforded to the Americans was suppressed by an edict prohibiting all intercourse with them."

It thus appears, that no idea was at that early period entertained by the British authorities of any unfriendly disposition on the part of France. So far from being inclined, as your Lordship supposes it might have been, to give aid to the insurrection, which since 1774 had been developing its great proportions, by any recognition of it as a belligerent, the French Sovereign frankly responded to an appeal made by Great Britain, by interdicting his people from all relations whatever with the Americans. In other words, the example shows that, on both sides, there was not the remotest conception that a recognition of insurgents as a belligerent, immediately upon the breaking out of the insurrection, could be considered as a justifiable act on the part of a friendly Power.

This brings me to the point at which I am compelled to question the soundness of the proposition upon which your Lordship appears to proceed, to wit: that the action of foreign countries in reference to an insurrection that may take place against the established Government of a friendly Power is to be regulated by a consideration of the magnitude of the numbers that are engaged in the struggle. To my mind there is a difficulty in finding a foundation in sound principles for drawing such a distinction. If I may be permitted to express my own impression, it is that this action of foreign Governments, if presumed to be really friendly, is rather to be based upon something like the same rule which they, whether representing large or small communities, would desire to be applied to themselves when in similar circumstances. The true criterion by which to be guided appears to be rather framed by patient observation of the probabilities of the issue. This can rarely be foreseen at the outset. It is not dependent on the mere accident of numbers. The force which lately overturned the Government at Naples did not seem adequate to the object; yet it was accomplished nevertheless and foreign nations, consequently, recognized the result.

On the other hand, the numerical force enlisted in the insurrection in the United States seemed large, but time has shown that there never was a moment, whilst it lasted, that it had a chance of success against the resolute perseverance of a far stronger antagonist. For a foreign nation to



have recognized in advance the handful of followers under the lead of General Garibaldi, as a belligerent power would have been everywhere regarded as a violation of comity to the sovereign then ruling at Naples, and interfering to uphold an otherwise desperate undertaking. Yet the new kingdom of Italy was the offspring of this enterprize. On the other hand, the attempt in advance to assume the unlikelihood that the legitimate authorities in the United States would sustain themselves purely because of the magnitude of the forces levied against them, and to make this reason a basis for an "unprecedented and precipitate" act, investing them with the rights of a belligerent all over the world, has ended only in furnishing a historical precedent, against the authority of which I cannot but feel it to be for the peace and the harmony of civilized nations, for all later times, most earnestly to protest.

If I am correct in this view, then the conclusion which I find true international comity to prompt is this. Whenever an insurrection against the established Government of a country takes place, the duty of Governments under obligations to maintain peace and friendship with it, appears to be at first to abstain carefully from any step that may have the smallest influence in affecting the result. Whenever facts occur, of which it is necessary to take notice, either because they involve a necessity of protecting personal interests at home, or avoiding an implication in the struggle, then it appears to be just and right to provide for the emergency by specific measures, precisely to the extent that may be required, but no farther. It is, then, facts alone, and not appearances or presumptions, that justify action. But even these are not to be dealt with farther than the occasion demands: a rigid neutrality in whatever may be done is of course understood. If after the lapse of a reasonable period there be little prospect of a termination of the struggle, especially if this be carried on upon the ocean, a recognition of the parties as belligerents appears to be justifiable; and at that time, so far as I can ascertain, such a step has never, in fact, been objected to. Lastly, when the evidence sustains a belief that the established Government has utterly lost the power of control over the resistance made, without probability of recovery, it is competent for any friendly Government to recognize the insurgent force as an independent Power without giving it just cause of offence. ◊

Such appears to me to have been the course rigidly adhered to by the Government which I have the honour to represent, in the long struggle that took place between Spain and her Colonies in South America. On which side of it the sympathies of the people were, cannot admit of a doubt. Yet the respective dates which your Lordship has been kind enough to search out and record in your note, sufficiently establish the fact, how carefully all precipitation was avoided in judging of the issue in regard to the mother country. I may, perhaps, be permitted to observe that the action of Her Majesty's Government in the same cases, furnishes even stronger precedents to confirm the soundness of my views. Its recognition of belligerency in these instances, cannot be considered as suitably described by either term, "unprecedented" or "precipitate."

I have dwelt at some length upon this original point of difference between the two countries, because it has ever seemed to me the fruitful parent of all the subsequent difficulties, the nurse of a very large share of ill-feeling which I cannot deny now to prevail amongst my countrymen. How much stress has been laid upon it by my

Government and how ably Mr. Seward, to whom your Lordship has kindly paid so grateful a compliment, has heretofore applied what you justly term "his remarkable powers of mind" to it, I am sure I need not remind you. In my note of the 20th of May I endeavoured to arrange in a logical sequence of distinct propositions, the effects which followed this as the first step, and which have led to the reclamations I have been constrained by my instructions to present. I do not propose at this time to dwell upon them further. I will only pray you to excuse the earnestness with which I venture to give expression to my views, under the plea of my belief that upon a correct decision in this controversy may depend the security which the commerce of belligerents will hereafter enjoy on the high seas against the hazard of being swept from them through the acts of nations professing to be neutral, and bound to be friendly.

For if it be once fairly established as a principle of the international code, that a neutral Power is the sole judge of the degree to which it has done its duty under a code of its own making, for the prevention of gross and flagrant outrages, initiated in its own ports by the agents of one belligerent in co-operation with numbers of its own subjects, and perpetrated upon the commerce of the other on the high seas; if it be conceded that the neutral, upon reclamation made for the injuries thus done by reason of the manifest inefficacy of its means of repression, which it has at all times the power to improve at will, can deliberately decline to respond to any such appeal, fall back upon the little that it has attempted as an excuse, and thenceforward claim, with justice, to be released from the inevitable consequences that must ensue from its inaction, then it must surely follow that the only competition between neutral Powers hereafter will be, not which shall do the most, but which shall do the least to fulfil its obligations of interdiction of the industry and enterprise of its people in promoting the conflicts that take place between belligerents on the ocean. If this be once recognized as good law through the authority which the powerful influence of Her Majesty's Government can attach to it, I dare not venture to foresee how much reluctance there may be on the part of the people whom I have the honour to represent to accept and act upon it. Hitherto a want of eagerness on the part of the most adventurous and least scrupulous portion of them to promote enterprise on behalf of any belligerent that promised personal advantage cannot be charged upon them. The references made by your Lordship to the cases of Spain and Portugal must have convinced you of this truth. The prospect of impunity in such enterprises is all that is needed. Further than this, I might only venture to suggest to your Lordship to consider which of the nations of the world presents on every sea around the globe the most tempting prizes, in an event no friend would more deplore than myself; of its being again, as it has so often been heretofore, doomed to be afflicted by the calamities of a war.

It does so happen, however, that no doctrine of this kind has yet been accepted as legitimate by the Government which I represent. On the contrary, it has ever assumed the painful and difficult task of responding to the just appeals of foreign friendly nations for protection against such enterprises. Whenever representations have been made by their agents, measures have been promptly taken to enforce the laws; and when the issue proved the inefficiency of the existing statutes, the duty of further legislation

has been promptly recognized. This appears to me to constitute the full obligation of a neutral. Singularly enough, this course was taken in at least three instances, on the representations made by authority of Her Majesty's Government. I allude to the first law passed in 1794, in consequence of the complaints and at the special instance of Mr. Hammond, and to another in 1797. Your Lordship appears to me but partially to state what was done, when you dwell only on the compensation actually made for the cases in which there had been a failure to act. These laws were enacted to provide a better preventive process in all future cases, mainly for the protection of British commerce. The third example was the law of 1838, which was the remedy applied to excesses committed on the boundary of the British provinces in Canada by persons in the United States, whom the existing statutes were found not effective to restrain or punish.

Thus it was, too, in the case of Portugal, to which your Lordship is pleased once more to call my attention. And here I must ask permission to re-state my view of the matter, which seems to have failed to be fully considered by your Lordship. I certainly understood you to introduce the case into the correspondence as going to show this: that the Government of the United States had set a precedent of disavowing further responsibility in cases of reclamations for injuries committed on the high seas by outfits made, in despite of them, in their ports, against the commerce of Portugal, which the existing law had proved on trial ineffective to prevent or punish. This is the precise position which I understand Her Majesty's Government to assume. Hence the value of the example as a personal argument in the present instance.

In opposition to this view, it has been my purpose, by appealing to the facts in the case, to show that the Government had at once recognized the validity of the remonstrances of Portugal, by first resorting to the laws already provided to meet the case by appeal to the Courts, and next by promptly responding to the later demand of the same nation for more effectual modes of restraint than those which experience had shown to be ineffectual. To meet this demand a new law more particularly addressed to the object of prevention had been enacted, the efficacy of which proved so considerable as actually to elicit from the remonstrating party repeated expressions of his satisfaction with it. It does not appear that any further security was ever asked than this. The Government had done everything that could be reasonably required. It was therefore discharged from responsibility.

There were, indeed, subsequent cases of wrongful outfits and captures, of which your Lordship has taken note. But in reply to the remonstrances that followed, the answer was prompt that they no longer raised questions that called for the interposition of the Executive Department. Its whole duty had been performed. The true remedy was now open by an appeal to the Courts. The language of Mr. Adams in his reply to M. Correa de Serra, a portion of which only I perceive has been introduced in your Lordship's note, goes directly to this point. I pray permission to supply it in the following extract:—

"The Government of the United States has neither countenanced nor permitted any violation of that neutrality by their citizens. They have by various and successive acts of legislature, manifested their constant earnestness to fulfil

their duties towards all the parties to that war; they have repressed every intended violation of them which has been brought before their Courts, and substantiated by testimony conformable to principles recognised by all tribunals of similar jurisdiction."

Your Lordship in reading this passage could hardly have failed to feel the force of the successive affirmations of facts which form the grounds of the plea that all the obligations imposed upon a neutral Power in such cases had been fulfilled.

The fact in the case was that M. Correa de Serra in his representations had begun to change his grounds of complaint, and direct his charges against the administration of justice in the Courts. This was a position obviously untenable. Much and sorely as I have felt at times the little chance that the United States has stood of receiving impartial justice in Her Majesty's Courts, I have never received from my Government any instructions which did not fully recognize the impropriety of raising a question in regard to their decisions. This makes no part whatever of the grounds upon which I am instructed to make reclamations. The question has never been as to what the judicial tribunals have done or failed to do. It turns exclusively upon the duties of a neutral Government to perform its obligations to a friendly Power by a prompt and energetic policy of repression of flagrant wrongs through existing means, and, in the event of a failure of those means, by the adoption of others which it was entirely within its power to supply, if so disposed. The responsibility entailed upon Her Majesty's Government in the present instance has always seemed to me to grow out of the feebleness of its measures of prevention at the outset, and its deliberate refusal to obtain an enlargement of its powers after existing remedies had proved unavailing.

With respect to that portion of your Lordship's note which appears to defend the existing legislation as having really proved adequate, I beg leave only to remark that it is sufficiently answered by the fact that you proceed to specify in proof of it mainly those cases in which Her Majesty's Government is admitted to have taken a responsibility of action beyond the law. Whilst I have been always ready to bear testimony to the eminent utility of the action for which your Lordship appears to have assumed a grave responsibility, I am at a loss to perceive how this diminishes the force of the reasoning which would seek from the legitimate protection of the law of the land that performance of obligations which appears now to depend only on the courage of the Minister to transcend its limits.

And here I must pray permission to dwell a moment upon one passage of your Lordship's note which has excited a strong sense of surprise, not to say astonishment. In order that I may by no possibility be guilty of any misconstruction of the meaning of the language, I take the liberty, with your permission, to transfer the very words. They are these:—

"You say, indeed, that the Government of the United States altered the law at the urgent request of the Portuguese Minister.

"But you forget that the law thus altered was the Law of 1794, and that the law of 1818 then adopted was, in fact, so far as it was considered applicable to the circumstances and institutions of this country, the model of our Foreign Enlistment Act of 1819.

"Surely, then, it is not enough to say that your Government, at the request of Portugal,

induced Congress to provide a new and more stringent law for the purpose of preventing depredations, if Great Britain has already such a law. Had the Law of the United States of 1818 not been already in its main provisions adopted by our Legislature, you might reasonably have asked us to make a new law; but surely we are not bound to go on making new laws *ad infinitum* because new occasions arise."

If I do not rightly comprehend the sense of your Lordship, I pray to be corrected when I assume it to be that an argument drawn from the precedent of the course of my Government in enacting a new law to meet the remonstrance of the Portuguese Minister has no force in supporting the representation I make in the present instance, because these very provisions of American legislation have been already long since substantially adopted by Great Britain in the Enlistment Act, the very act which is now complained of as ineffective. In other words, your Lordship appears to take it for granted that Great Britain, having already passed a law as stringent and effective as that of the United States, is therefore justified in declining any proposal to go on amending it.

If this be in verity your position, I must pray your pardon if I hazard the remark, in reply, that you cannot have given to the respective Statutes in question the benefit of that careful collation which the occasion would seem to require. If you had done so you must have noticed that, in point of fact, they are materially unlike. The British Law, is, as your Lordship states, a reenactment of that of the United States, but it does not adopt all of "its main provisions," as you seem to suppose. Singularly enough, it entirely omits those very same sections which were originally enacted in 1817 as a temporary law on the complaint of the Portuguese Minister, and were made permanent in that of 1818. It is in these very sections that our experience has shown us to reside the best preventive force in the whole law. I do not doubt, as I had the honour to remark in my former note, that if they had been also incorporated into the British Statute, a large portion of the undertakings of which my Government so justly complains would either have never been commenced, or, if commenced, would never have been executed. Surely it was not from any fault of the United States that these effective provisions of their own law failed to find a place in the corresponding legislation of Great Britain. But the occasion having arisen when the absence of some similar security was felt by my Government to be productive of the most injurious effects, I cannot but think that it was not so unreasonable as your Lordship appears to assume, that it should hope to see a willingness in that of Great Britain to make the reciprocal legislation still more complete. In that hope it was destined to be utterly disappointed. Her Majesty's Government decided not to act. Of that decision it is no part of my duty to complain. The responsibility for the injuries done to citizens of the United States by the subjects of a friendly nation, by reason of this refusal to respond, surely cannot be made to rest with them. It appears, therefore, necessarily to attach to the party making the refusal.

But if the example thus set by Her Majesty's Government should come to be generally adopted, and the principles of neutrality upon which it rests be recognized as a part of the code of International Law, then it is not difficult to foresee the probable consequence. A new era in the relations of neutrals to belligerents on the high seas will open. Neutral ports in that event will,

before long, become the true centres from which the most effective and dangerous enterprizes against the commerce of belligerents may be contrived, fitted out, and executed. The existing restrictions upon the exploits of daring adventurers will rapidly become obsolete, and no new ones will be adopted. Ships, men, and money will always be at hand for the service of any Power sufficiently strong to hold forth a probability of repayment in any form, or adroit enough to secure a share of the popular sympathy in its undertakings. New "Floridas," "Alabamas," "Shenandoahs," will appear on every sea. If such be the recognized law, I will not undertake to affirm that the country which I have the honour to represent would not in the end be as able to accommodate itself to the new circumstances as Great Britain. Whilst I cannot but think that every moderate statesman would deprecate such a change, which could hardly fail to increase the hazard of lamentable complications among the great maritime Powers, I cannot see an escape from it, if a nation itself possessing a marine so numerous and extensively dispersed decides to lead the way.

Entertaining these views, it appears scarcely necessary for me to follow your Lordship further in the examination of details of former precedents either in English or American history. I am happily relieved from any such necessity by learning the conclusions to which Her Majesty's Government have arrived. Understanding it to decline the proposal of arbitration, which I had the honour, under instructions, to present, in any form, for reasons assigned by your Lordship, I nevertheless am happy to be informed that "Her Majesty's Government are ready to consent to the appointment of a Commission, to which shall be referred all claims arising during the late civil war which the two Powers shall agree to refer to the Commissioners."

I have taken measures to make known, at the earliest moment, this proposal to my Government, and shall ask permission to await the return of instructions before giving a reply.

Disclaiming all authority to express in advance any opinion on the part of my Government, I pray, at the same time, your Lordship's attention to a single circumstance which, without a previous agreement upon the great principles of international law involved in this controversy, may raise a difficulty in the way of accepting the proposal. At a first glance it would appear as if it were, in substance, identically the same with that long ago made by the Portuguese Government to that of the United States. The essence of the answer returned in that case happens to have lately passed under your eye, since it is found incorporated in your Lordship's note. I trust I cannot be suspected of a desire to imply that, in taking this step, Her Majesty's Government could have sought to appear either as proposing, on the one hand, a measure which it foresaw must be declined, or, on the other, one which, if accepted, could be so accepted only at the risk of a charge of disavowing the views of constitutional or international law entertained by my Government in former times. It may indeed be that, in this view, I may, after explanation, find that I have misconceived the nature of your Lordship's proposal on the view which my Government will take of it, in which case I pray you to excuse the suggestion, and consider it as made without authority, and solely in the hope of eliciting such explanation.

I take great satisfaction in concluding this note by cordially responding to your Lordship's request "to join with Her Majesty's Govern-

ment in rejoicing that the war has ended without any rupture between two nations which ought to be connected by the closest bonds of amity."

I likewise receive with great pleasure your Lordship's assurances that the efforts by which the Government and Congress of my country have shaken off slavery "have the warmest sympathies of the people of these kingdoms."

If from painful observation in a service extended through four years, I cannot in candour yield my entire assent to this statement, as applied to a large and too influential portion of Her Majesty's subjects; if it has been my misfortune to observe in the process of so wonderful a revolution, a degree of coldness and apathy prevailing in many quarters, from which my countrymen had every right to expect warm and earnest sympathy; if throughout this great trial, the severity of which, few not well versed in the nature of our institutions could fully comprehend, the voice of encouragement from this side of the water has too often emitted a doubtful sound, I yet indulge the hope that the result arrived at will ultimately correct the hasty and harsh judgments that flowed from lack of faith and of con-

fidence in our fidelity to a righteous cause. Of the friendly disposition in this regard of the members of Her Majesty's Government, and especially of your Lordship, I have never permitted myself to doubt. And yet in the midst of the gravest of our difficulties, I cannot forget that even your Lordship was pleased, in an official published despatch, to visit with the severity of your but too weighty censure, the greatest political measure of the late lamented President, that which, in fact, opened the only practicable way to the final attainment of the glorious end. Under such circumstances, I pray you not to be surprised if I am compelled not to disguise the belief that with my Government, as among my countrymen at large, there is still left a strong sense of injured feeling, which only time and the hopes of a better understanding in future, held out by the conciliatory strain in your Lordship's note, are likely to correct. Recognizing most fully the justice and propriety of the joint policy marked out in your concluding sentence, I have, &c.,

(Signed) CHARLES FRANCIS ADAMS.

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