

to prove that such illegality or such violation has any other effect than to make the offenders responsible to the neutral.

In matters of violated neutrality the neutral alone is the judge. In this case, if our Government permitted the passage of Young with his party through our territory, as an armed party of Southern troops, the United States Government might complain to our Government of the granting of the permission, unless we have granted similar privileges to her troops, in which case she could not. But such passage, and still less a peaceful passage, of unarmed or apparently unarmed men through our territory, can afford no grounds to the United States to appear before our Courts, and urge that our neutrality has been violated; and such a charge from them assumes a character of absurdity when it is made a ground, indirectly it is true, but still a ground, for an application that the offenders be handed over to them for punishment. If that is law I am at a loss to imagine upon what principle it can be held so. I have not found such an opinion laid down in the books, and I cannot but consider that it proceeds from fallacious reasoning. But there are recent illustrations of this view precisely in point. The applicants have endeavored to shew that the prisoners had become British subjects, *pro hoc vice*, as they term it, and subject to the obligations of British subjects. But even granting that they were actually British subjects, which is the most favorable case for the applicants, the rule contended for would not apply, if they acted under a commission from the belligerent.

I have already adverted repeatedly to the Gerity case, but I must again refer to it in this behalf. Ch. J. Cockburn says: "I concur in thinking that persons so acting, though *not* subjects of a belligerent state, *and though they may be violating the laws of their own country* * * * such persons cannot be treated as pirates." In the Chesapeake case Judge Ritchie, speaking of neutrals engaging in hostilities, says: "They may make themselves amenable to the *law of their own country* * * * but they cannot be dealt with by the belligerent against whom they are acting, as pirates." And further on he states: they cannot "*without any commission or authority fit out in a neutral country*" a hostile expedition against a power at peace with such country," &c., &c. And he warns them that if they do so, they must take care to have a commission. In the Gerity case the party went on board the vessel at a neutral port; in the Roanoke case they did so also; in the Chesapeake case the prisoners were British subjects yet it was distinctly laid down in two of those cases that a violation of neutrality did not affect the character of belligerency in the prisoners; and in the third, so far as I know, the question was not attempted to be raised.