import between Sovereign Powers. The regret we may feel on the occasion, is, nevertheless, modified by the reflection that the difficulty is not altogether anomalous. Similar and equal deficiencies are found in every system of municipal law, especially in the system which exists in the greater portions of Great Britain and the United States. The title to personal property can hardly ever be resolved by a court without resorting to the fiction that the claimant has lost and the possessor has found it; and the title of real estate is disputed by real litigants under the names of imaginary persons.

"It must be confessed, however, that while all aggrieved nations demand, and all impartial ones concede the need of some form of judicial process in determining the characters of contraband persons, no form but the illogical and circuitous one thus described exists, nor has any other yet been suggested Practically, therefore, the choice is between that judicial remedy and no judicial remedy whatever. If there be no judicial remedy, the result is, that the question must be determined by the captor himself on the deck of the prize vessel. Very grave objections are against such a course. The captor is armed; the neutral is unarmed. The captor is interested, prejudiced, and perhaps violent; the neutral, if truly neutral, is disinterested, subdued, and helpless. The tribunal is irresponsible, while its judgment is carried into instant execution. The captured party is compelled to submit, though bound by no legal, moral, or treaty obligation to acquiesce. Reparation is distant and problematical, and depends at last on the justice, magnanimity, or weakness of the State in whose behalf and by whose authority the capture was made. Out of these disputes reprisals and wars necessarily arise, and these are so frequent and destructive that it may well be doubted whether this form of remedy is not a greater social evil than all that could follow if the belligerent right of search were universally renounced and abolished for ever. But carry the case one step further. What if the State that has made the capture unreasonably refuses to hear the complaint of the neutral, or to redress it? In that case the very act of capture would be an act of war—of war begun without notice, and possibly entirely without provocation. I think all unprejudiced minds will agree, that, imperfect as the existing judicial remedy may be supposed to be, it would be, as a general practice, better to follow it than to adopt the summary one of of leaving the decision with the captor, and relying upon diplomatic debates to review his decision. Practically it is a question of choice between law, with its imperfections and delays, and war, with its evils and desolations. Nor is it ever to be forgotten that neutrality, honestly and justly preserved, is always the harbinger of peace, and is therefore the common interest of nations, which is only saying that it is he interest of humanity itself.

"At the same time it is not to be denied that it may sometimes happen that the judicial remedy will become impossible—as by the shipwreck of the prize vessel, or other circumstances, which excuse the captor from sending or taking her into port for confiscation. In such a case the right of the captor to the custody of the captured persons, and to dispose of them, if they are really contraband, so as to defeat their unlawful purposes, cannot reasonably be denied. What rule shall be applied in such a case? Clearly the captor ought to be required to shew that the failure of the judicial remedy results from circumstances beyond his control, and without his fault. Otherwise he would be allowed to derive advantage from a wrongful act of his own."

Applying these principles to the facts before him, the position of the American Minister is this—that although The Trent was carrying persons, whom, by the law of nations, she was prohibited from carrying; although Captain Wilkes had a right to board and search her for those persons, and, on finding them in her, had a right to capture both them and the vessel; still that he had no right (unless with the concurrence of the authorities of The Trent, which he had not obtained, or was compelled by stress of weather, or being unable to spare a prize crew for her, &c.,) to take those persons out of her; but was bound to take her and her illegal freight into port for condemnation as prize by a judicial tribunal. And that, as he did not do this, but took those persons out of the ship, allowing her to go free on her voyage, the persons so taken were in an unlawful custody, and the Government of the United States was bound to restore them to the country from under the protection of whose flag they had been taken. He restores them accordingly.

The first observation that naturally presents itself to the mind on reading this is, that the American Minister does not profess to rest his case on any known and established rule of international law. The rule which he invokes is, in his own language, "unsettled"—a rule uncertainly established,—one respecting which "the books of law are dumb," &c.; and he admits by implication, if not in express terms, that it is a rule for the establishment of which the United States of America have always contended against other nations. For, in subsequent passages of his despatch he speaks of it as "an old, honoured, and cherished American cause;" "the most cherished principle," "the essential policy" of his Government, &c.

Admitting that whenever there is any doubt or dispute, or wherever it is reasonably practicable to bring the captured vessel into port for adjudication, it is right to do so, we deny the rule laid down by the American Minister as a rule obligatory in all cases, and foresee much mischief if it were adopted in its entirety.

Its first effect would be to tie up most unfairly the hands of belligerents, and confer on neutrals most dangerous powers of evading the law of nations. The American Minister plausibly argues in favour of his theory, "The captor is armed; the neutral is unarmed. The captor is interested, prejudiced, and perhaps violent; the neutral, if truly neutral, is disinterested, subdued, and helpless." How the neutral is "disinterested" we confess we do not see; and with respect to the interest of the captor, his interest in general is to bring the vessel into port, for by taking the goods or persons, and forbearing to capture the ship, he sacrifices a prize.

The American Minister, indeed, admits that certain circumstances might dispense with the rigour of his rule—namely, the consent of the authorities of the captured vessel, stress of weather, inability to furnish a prize crew, etc. But many cases occur in war, where, without any of these excuses, the being compelled to place a prize crew in a captured vessel would be a very great hardship on the captor, for reasons which could not be disclosed to a prize court without the greatest inconvenience and danger. Take this case:—A ship of war, pretty fairly but not over manned, meets, off the enemy's coast, a dozen neutral vessels going directly thither, conveying troops of the enemy. Has she not a right to board them, and take out the illegal freight? Surely such conduct in the neutral vessels is an act of interference in the war, and, at all events, is an evil to remedy which the ordinary process of law would be too slow, and which must be dealt with by instant action—"Silent leges inter arma." Now, the American Minister must say that this course is not open, and that the captor must put a prize crew into each of those vessels, and send them into port for adjudication as prize? To do this would probably require 100 of his crew, and his orders might be to watch a ship of superior force, whom he dared not engage unless with a full crew, and perhaps at a disadvantage even then. Would such instructions be a fit matter to disclose in a prize court? Many similar cases might be put.

Secondly, such a rule would be to the disadvantage of honest neutrals, who, in general, take good care not to carry con-