

proved by the government must be allowed to draw its legal consequence after it. It is of the very nature of a gift or a charity that the giver cannot, after the exercise of his benevolence is past, recall or modify its benefits.

We are thus brought directly to the question whether we are entitled to regard the release of the *Trent* as involuntary, or whether we are obliged to consider that it was voluntary. Clearly the release would have been involuntary had it been made solely upon the first ground assigned for it by Captain Wilkes, namely, a want of a sufficient force to send the prize vessel into port for adjudication. It is not the duty of a captor to hazard his own vessel in order to secure a judicial examination to the captured party. No large prize crew, however, is legally necessary, for it is the duty of the captured party to acquiesce, and go willingly before the tribunal to whose jurisdiction it appeals. If the captured party indicate purposes to employ means of resistance which the captor cannot with probable safety to himself overcome, he may properly leave the vessel to go forward; and neither she nor the State she represents can ever afterwards justly object that the captor deprived her of the judicial remedy to which she was entitled.

But the second reason assigned by Captain Wilkes for releasing the *Trent* differs from the first. At best, therefore, it must be held that Captain Wilkes, as he explains himself, acted from combined sentiments of prudence and generosity, and so that the release of the prize vessel was not strictly necessary or involuntary.

Secondly. How ought we to expect these explanations by Captain Wilkes of his reasons for leaving the capture incomplete to affect the action of the British government?

The observation upon this point which first occurs is, that Captain Wilkes's explanations were not made to the authorities of the captured vessel. If made known to them, they might have approved and taken the release upon the condition of waiving a judicial investigation of the whole transaction, or they might have refused to accept the release upon that condition.

But the case is one not with them, but with the British government. If we claim that Great Britain ought not to insist that a judicial trial has been lost because we voluntarily released the offending vessel out of consideration for her innocent passengers, I do not see how she is to be bound to acquiesce in the decision which was thus made by us without necessity on our part, and without knowledge of conditions or consent on her own. The question between Great Britain and ourselves thus stated would be a question not of right and of law, but of favor to be conceded by her to us in return for favors shown by us to her, of the value of which favors on both sides we ourselves shall be the judge. Of course the United States could have no thought of raising such a question in any case.

I trust that I have shown to the satisfaction of the British government, by a very simple and natural statement of the facts, and analysis of the law applicable to them, that this government has neither meditated, nor practiced, nor approved any deliberate wrong in the transaction to which they have called its attention; and, on the contrary, that what has happened has been simply an inadvertency, consisting in a departure, by the naval officer, free from any wrongful motive, from a rule uncertainly established, and probably by the several parties concerned either imperfectly understood or entirely unknown. For this error the British government has a right to expect the same reparation that we, as an independent State, should expect from Great Britain or from any other friendly nation in a similar case.

I have not been unware that, in examining this question, I have fallen into an argument for what seems to be the British side of it against my own country. But I am relieved from all embarrassment on that subject. I had hardly fallen into that line of argument when I discovered that I was really defending and