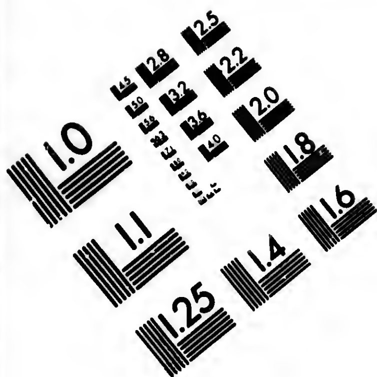

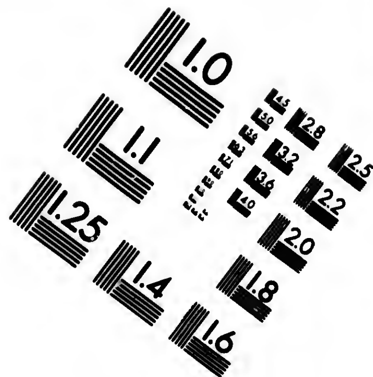

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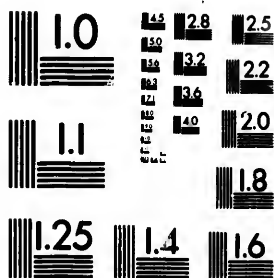

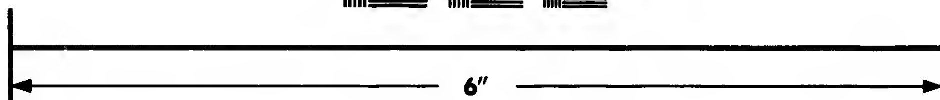

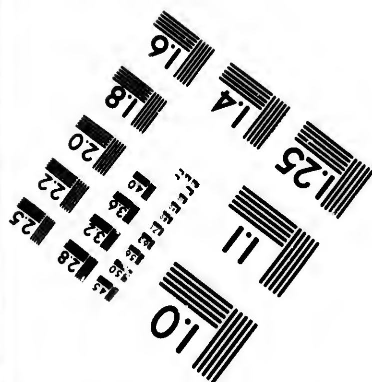

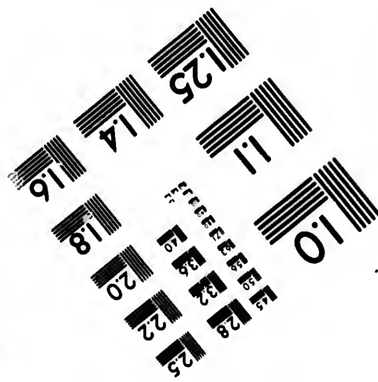

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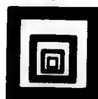

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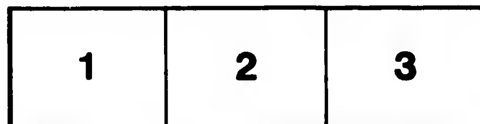

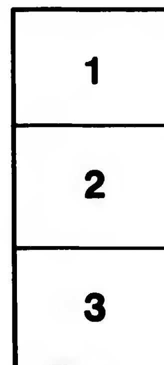

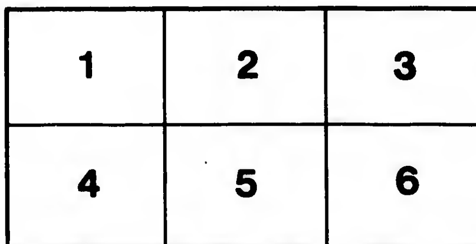

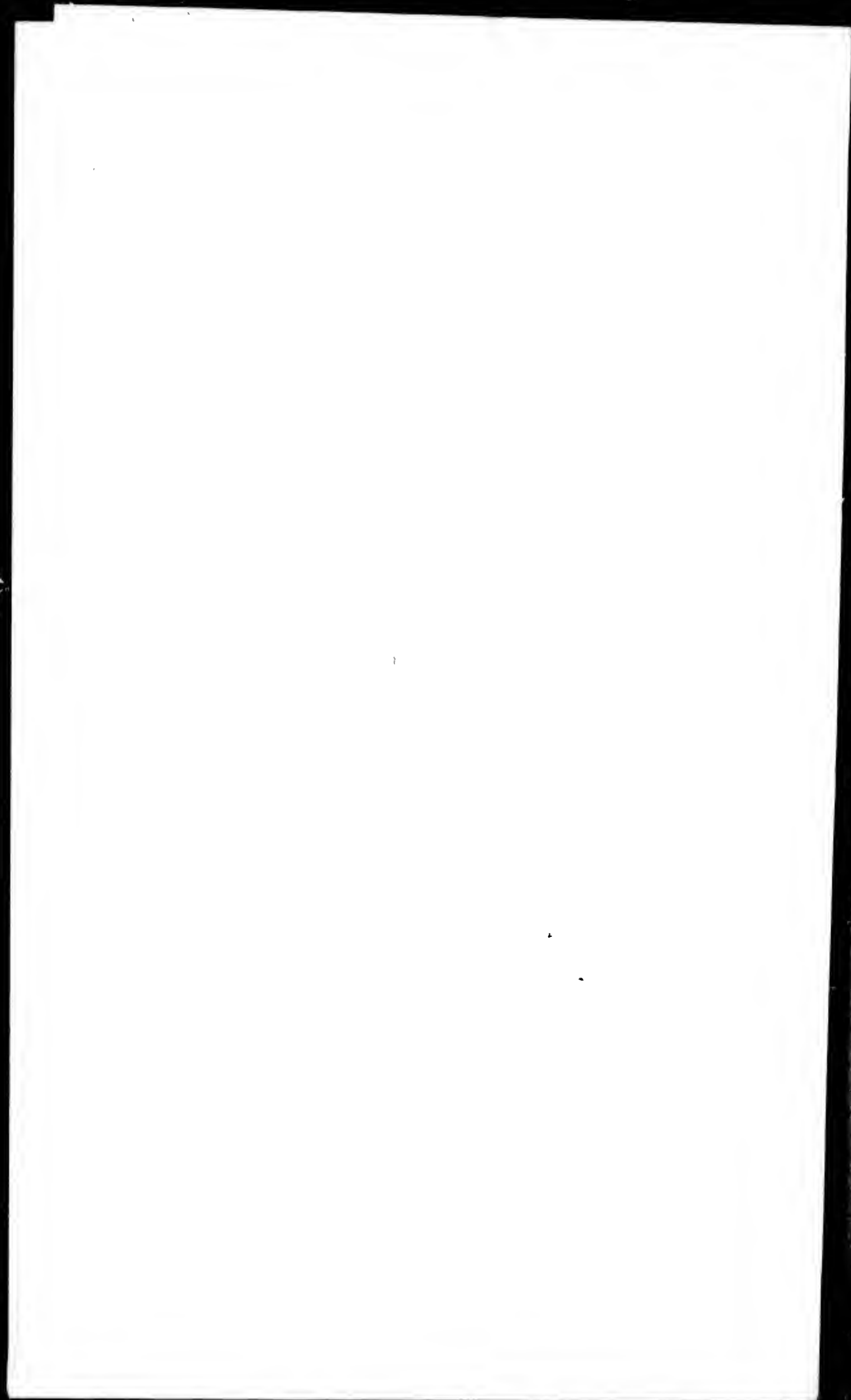

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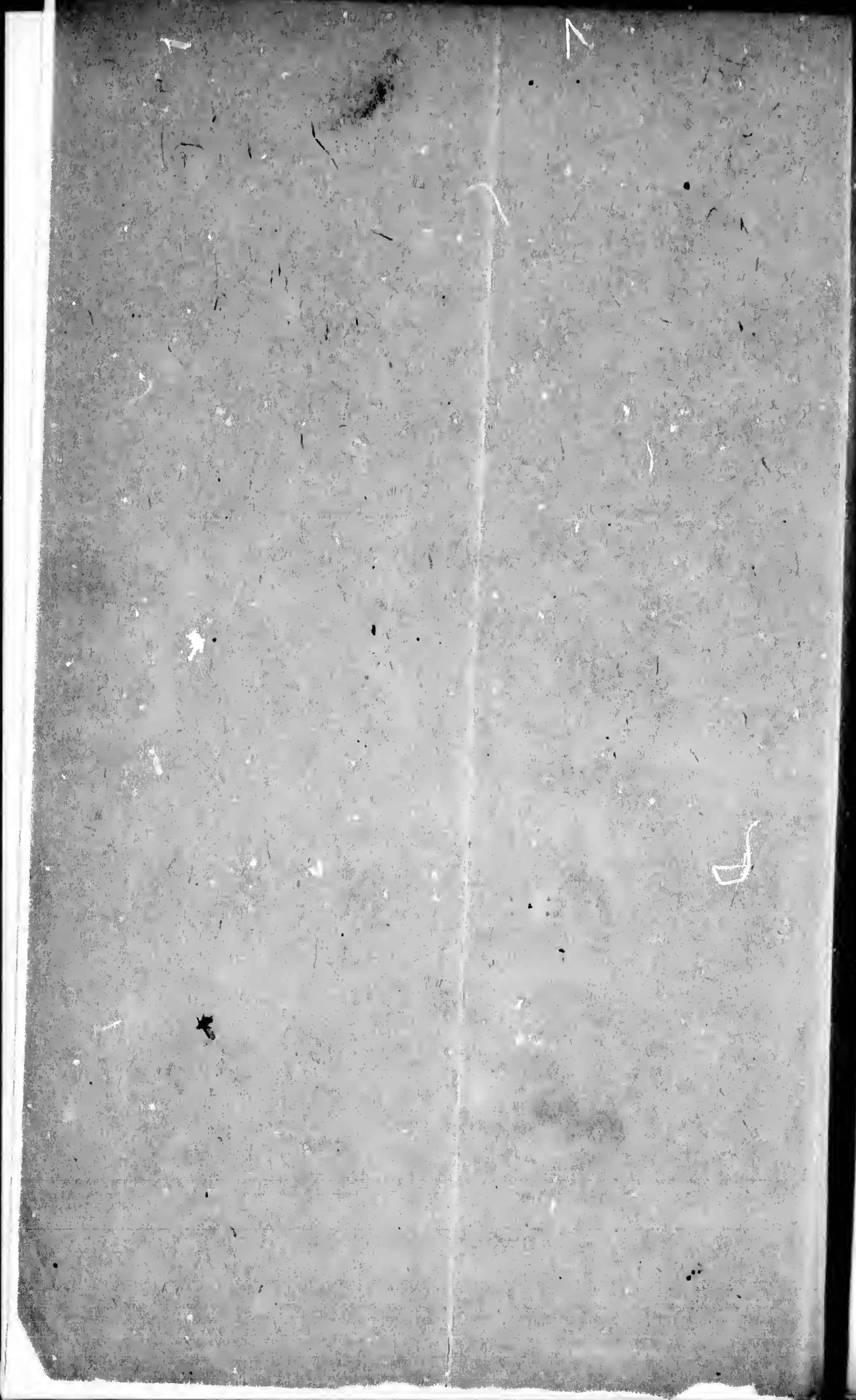

Neutral Relations

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NEUTRAL RELATIONS AND THE TREATY OF WASHINGTON.

THE UNITED STATES, PRIOR TO THE REBELLION, THE CHAMPION OF THE RIGHTS OF NEUTRALS.

Up to the time of the southern rebellion we had always championed the rights of neutrals, maintaining that neutral nations had a perfect right to trade with either of the belligerents, and to supply them with munitions of war, or anything else; and that our Government was not liable for the unauthorized acts of our citizens acting as filibusters, privateers, or sympathizers.

THE WAR OVER, OUR RETURN TO OUR EARLY LOVE, SHOWN BY BANKS'S BILL ON NEUTRAL RELATIONS.

Very soon after we ceased to be a belligerent, we began to show unmistakable signs of a desire to return to our early love. This is shown by the unanimous vote of the House of Representatives in favor of Mr. Banks's bill to remodel the neutrality laws. Section 10 of that bill enacts, that although our citizens shall not "knowingly be concerned in the *furnishing*, *fitting out*, *and arming* of any ship or vessel, with intent" that it shall be employed to cruise against a country at peace with us, yet, "that nothing in this act, or any existing law, shall be so construed as to prohibit citizens of the United States from selling vessels, ships, or steamers, built within the limits thereof, or materials or munitions of war, the growth or product of the same, to inhabitants of other countries, or to governments not at war with the United States." (*39th Congress*, *1st session*, *H. R. Bill* 806.) This bill was reported by the Committee on Foreign Affairs, "to which was referred for consideration resolutions concerning the struggle of Ireland

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for independence." The vote on the bill was taken by yeas and nays. *Nays, none.*

Under this law any number of Alabamas might be built and sold in the United States to belligerents, with full knowledge of the intention to use them as ships of war against a country at peace with us.

Whilst we were at war with the Confederate States we became violent opponents of the rights of neutrals. Accordingly we got up, amongst other complaints against England, the charge that she was not sufficiently vigilant in watching a ship (the Alabama) that was being built in an English port, and which ship was capable of being used as a ship of war; that consequently she got out of port upon the false pretext that she was going on a trial trip, and then, when beyond English jurisdiction, she got a fitting out and armament, and proceeded to capture many of our vessels. Now, with the most marvellous inconsistency, we persist in continuing to claim damages for this alleged negligence, whilst we are at the same time proclaiming to the world that our citizens *ought not to be prohibited from making and selling ships to belligerents to be used as ships of war*, provided only that the purchaser is not at war with us. That is to say, we maintain that if any body in England sold a ship to the Confederates, that might be fitted out and used as a ship of war, after furtively getting out of an English port, the English government must make full compensation for the captures made by such vessel, if its escape could have been prevented by vigilant detectives and officers. But that, on the other hand, we may, under the like circumstances, make and *openly sell such ships* to countries at war with England, although the sellers are well aware that the ships are to be used as war vessels against England!

ELOQUENT REPORT OF THE HOUSE COMMITTEE ON FOREIGN RELATIONS DENOUNCING THE LAW WHICH INTERFERES WITH THE SALE OF SHIPS TO BELLIGERENTS.

The committee which reported the above-mentioned bill presented a report, containing a lengthy review of the his-

tory of our neutrality laws. In that report, the right of our citizens to build and sell ships-of-war to foreigners is very ably maintained. The committee say:

"The recent improvements in naval architecture are such as to diminish the distinctions between merchant vessels and ships-of-war, and to facilitate the adaptation of one to the purposes of the other. A strong-built, swift-sailing merchant vessel or steamer could be made with a single gun an effective war vessel. To prohibit our citizens from building such vessels or selling materials for their construction at a time when all nations except our own are at war, because they may be employed for hostile purposes by foreign subjects, or to demand bonds in double the amount of vessel, cargo, and armament, and to require officers of the customs to seize and detain them whenever cargo, crew, or 'other circumstances' shall render probable a suspicion that they are to be so used, and where American citizens are part owners only, is substantially to deprive them of their rights to engage in the construction of vessels, or to furnish materials therefor."

INCONSISTENCY OF THE COMMITTEE'S ARGUMENT WITH THE ALABAMA CLAIMS.

It seems to have occurred to the committee that the doctrine contended for by them might be deemed inconsistent with the Alabama claims. They undertake to refute that idea, and contend that England is liable, because the vessels built in England, which became confederate ships-of-war and captured our vessels, were built in violation of the English act of Parliament. According to the committee, the English builders committed no act wrongful in itself, did not violate any rule of international law; but only exercised what would have been their right, "to engage in the construction of vessels," but for the provisions of the English neutrality act. It may be doubted, however, whether they did violate the English law at all; but if they did, that is a matter which we have nothing to do with. The enforcement of that law concerns England alone, where no violation of international law is concerned.

The committee, by way of additional argument, say:

"*Our complaint is based upon*" the premature recognition of the *rebels* as belligerents; and the committee call them *pirates.*

That basis is a very poor one. It would have been absurd and monstrous to treat the Southern States—each of which had a complete system of government—as *piratical.*

The confederate government held complete sway over the seceded States. We are the last people on the face of the earth to complain of promptitude in the recognition of belligerency, seeing that we have always been prompt in that respect, and doubtless always will be so, especially when people rise to throw off a government which we deem tyrannical. Besides, we declared a blockade of the southern ports, not an embargo, and thus we ourselves gave the confederates the character of belligerents.

The committee say:

"The highest interests of civilization demand that the liberties and rights of neutrals should be extended, and the privileges and powers of States at war diminished. Upon the recognition of this principle depends the progress of nations, the independence of States, the liberties of the people. To restrict the rights of neutrals, and enlarge the power of belligerents, is to reject the teachings of Christianity and the improvements of civilization, and to return to the doctrines of uncivilized nations and the practices of barbaric peoples.

"In reviewing the statute of 1818, we cannot escape the conclusion, that it is founded upon an opposite and unsound philosophy; that it disregards the inalienable rights of the people of all nations; that it was imposed upon the country by considerations affecting exclusively the political interests of other nations; that it criminally restrains the rights of nations at peace for the benefit of those at war; that it was intended to perpetuate the supremacy of favored nations on the sea. It properly belongs to another age, and is not of us nor for us."

RIGHT OF OUR CITIZENS TO SELL ARMS TO BELLIGERENTS—REVERSAL OF GENERAL M'DOWELL'S ORDER PROHIBITING EXPORTATION OF ARMS TO MEXICO—OPINION OF ATTORNEY GENERAL SPEED, DECEMBER 23, 1865.

We have always insisted that our people have good right to sell arms to belligerents, subject, of course, to the risk of capture by the opposite party.

Can any good reason be given why it should be unlawful to sell a ship, capable of being made an effective war vessel, to a belligerent, and yet be lawful to sell to that belligerent guns, rifles, powder, and balls? We got arms and munitions from England, and so did the confederates; and it is doubtful whether we should have been the gainers by the exclusion of both parties from the market.

The right of our people to sell arms to a belligerent purchaser is well known to lawyers; but as there seems to be some misapprehension in the public mind on the subject, it may be well to advert to a very recent event, in which the right was vindicated by our Government.

General McDowell, having prohibited the exportation of arms from California to Mexico, the Attorney General, Mr. Speed, was called upon for his official opinion as to the legality of that prohibition. In his opinion, under date of December 23, 1865, (*Ex. Doc. Mexican Affairs, vol.* 2, *p.* 229,) which, it will be observed, is *after the termination of our war*, he says:

"Now, I apprehend it to be well settled, that neutrals may lawfully sell at home to a belligerent purchaser, or carry themselves to the belligerent power, contraband articles subject to the right of seizure *in transitu.*" (*Kent's Comm.*, p., 142.) In the case of the Santissima Trinidad, Mr. Justice Story, in delivering the opinion of the court, said: "There is nothing in our laws, or in the law of nations, that prohibits our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation. 7 *Wheat.*, 340."

Mr. Seward, Secretary of State, instructed General McDowell to revoke his order.

General Grant *had* revoked it directly he heard of it.

The committee, in the aforesaid report on neutral relations, argued, and with great truth and justice, that the effect of the restriction, as to ships, imposed by the existing law of 1818, "*is to perpetuate the subjugation of States without naval force to the will of dominant maritime nations.*"

Why should that policy be continued? We allow ourselves to be influenced too much by ancient practices. Why should a nation without a navy, or with only a small navy, be harried and worried and oppressed with impunity by a great naval power, when, having money with which to purchase ships, it could defend itself if allowed to do so?

OUR OLD ESTABLISHED DOCTRINE, AFFIRMING OUR NON-LIABILITY FOR THE UNAUTHORIZED ACTS OF FILIBUSTERS, PRIVATEERS, &C.

Formerly, when we were the champions of neutral rights, we used to lay down the doctrine broadly, that we were not liable for the unauthorized acts of our citizens in fitting out privateers to prey on the commerce of belligerents; nor for any filibustering expeditions to Texas, Mexico, Cuba, or elsewhere, although the money and the men for such expeditions were sometimes obtained through advertisements, public meetings, and the most open and notorious means, which could easily have been suppressed by the State and federal authorities.

THE DESTRUCTION OF THE COMMERCE OF PORTUGAL BY BALTIMORE CLIPPERS—OUR REPUDIATION OF ALL LIABILITY.

At one time the commerce of Portugal was destroyed by Baltimore clippers—privateers—sailing openly, without the slightest attempt at concealment, out of the port of Baltimore, under the flag of the seceding or revolting provinces of Portugal, and many of the leading men of Baltimore were interested in the business.

The Portuguese government contended that our Government, or the State authorities, could and ought to have restrained these operations; and, having failed to do so, that our Government ought to indemnify the sufferers.

How did we treat that claim? We met it with a plump denial of the obligation assumed by the claimants, and maintained that no nation had ever admitted its responsibility for the unauthorized acts of its citizens beyond its jurisdiction. (*Letter of J. Q. Adams, Sec. of State, to the Chev. Corrêa de Serra, March* 14, 1818, *Ex. Doc.* 53, 1*st Sess.* 32*d Cong., p.* 166.)

That is the true American doctrine, which we should not have allowed ourselves to be inveigled from by anti-British demagogues and ambitious lawyers, anxious to get up a big case, without any knowledge of or care about the ultimate consequences and the true policy of the country.

In our "case" we contend that it is a violation of international law if a government negligently fails to prevent its citizens from sending out of any of its ports a vessel, *with intent* or *knowledge* that the same shall or will be employed in the naval service of any foreign power then at war.

In opposition to this may be presented the bill passed unanimously by our House of Representatives, making *it lawful* to build and sell *home-made* ships, adapted for war purposes, from which it is evident that we *do not mean to be bound by* that alleged *rule of international law*, and in fact that *we deny that there is any such law*. The "case" is right in affirming that restrictions imposed by international law cannot be aborogated by municipal laws. And our House of Representatives did not propose to abolish a rule of the law of nations, but did intend, fully and clearly, to put the right of building and selling ships of war on the same footing as arms and ammunition.

We have by the treaty a new set of rules, which we agree to be governed by in our relations with Great Britain—not with any other nation.

The treaty does not declare these rules to be part of the

law of nations, but both parties agree to invite other maritime powers to accede to them.

Our commissioners, in negotiating this treaty, obtained the adoption of these rules in order to improve our chances of winning the case before the arbitrators. To secure that comparatively unimportant result, they agreed to bind us to a certain course of conduct in future. The English thought they got a *quid pro quo*.

THE PORTUGUESE CASE STATED—THE STRONGEST CASE ON RECORD—INTERESTING CORRESPONDENCE BETWEEN THE TWO GOVERNMENTS.

The case of Portugal against the United States was much stronger than that of the United States against England, now pending before the Geneva tribunal of arbitrators. A short summary of it may be interesting and somewhat instructive.

On December 20, 1816, the Chevalier Joseph Corréa de Serra, the Portuguese minister at Washington, addressed a note to Mr. Monroe, Secretary of State, informing him that certain privateers were being fitted out in American ports to capture Portuguese ships; that the armaments were carried on in the port of Baltimore in a bare-faced way, and requests that the citizens of the United States shall be prevented by the laws of their country from becoming, in masses, acting parties in wars which are not their own. (*Ex. Doc.*, 1*st Sess.* 32*d Cong.*, *Doc. No.* 53, 3*d series*, *No.* 1, *p.* 161.)

To this Mr. Monroe replied, December 27, 1816, as follows, (*Ex. Doc.*, *supra*, *p.* 163:)

> "You are aware that the vessels are equipped without any authority from the Government, and on pretexts very different from those which you assign. You are also aware that the existing laws do not authorize the President to interfere in such cases."

He adds, that the President will recommend the passage of a law to preserve neutrality. (That law was enacted 3d

March, 1817, and that act was amended by an act passed in 1818, which is now in force.)

On March 8, 1818, M. de Serra addressed a note to Mr. John Q. Adams, Secretary of State, (*Ex. Doc. supra, page* 165,) referring to the capture of three Portuguese ships by privateers fitted out in the United States, manned by American crews, and commanded by American captains, and expresses a hope that the Government of the United States will be willing to give satisfaction and indemnification for the injury done.

To this Mr. J. Q. Adams replied, March 14, 1818, (*Ex. Doc. supra, page* 166 :)

"SIR: Your letter of the 8th instant, complaining of the capture of three Portuguese ships by privateers, said to be fitted out in the United States, manned by American crews and commanded by American captains, though under colors other than those of the United States, has been received.

"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 laws of nations the obligations of the American Government extend no further."

Again, M. de Serra writes to Mr. Adams November 23, 1819, (*Ex Doc. supra, page* 174:)

"During more than two years I have been obliged by my duty to oppose the systematic and organized depredations daily committed on the property of Portuguese subjects by people living in the United States, and with ships fitted in ports of the Union, to the ruin of the commerce of Portugal. 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 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 favorable occasion of sailing for a cruise. * * *

"They are more powerful than the African infidels, because the whole coast of Barbary does not possess such a strength of privateers. * * *

"I shall not tire you with the numerous instances of these facts, but it may be easily conceived how I am heartily sick of receiving frequent communications of Portuguese property stolen, of delinquents inconceivably acquitted, letters from Portuguese merchants deeply injured in their fortunes, and seeing me (as often as has been the case) oppressed by prayers for bread from Portuguese sailors, thrown penniless on the shores after their ships had been captured."

He adds, "I trust in the wisdom and justice of this Government; he will find the proper means of putting an end to this monstrous infidel conspiracy, so heterogeneous to the very nature of the United States."

On May 25, 1850, the Portuguese minister, the Chevalier de Figaniere, addressed a note to Mr. Clayton, the Secretary of State, (*Ex. Doc. supra, page* 179,) referring to the depredations above mentioned, and proposing a commission to examine into and estimate the losses and damages arising from these captures. He says that negotiations have been interrupted in consequence of the many political vicissitudes through which Portugal has unfortunately passed for many years.

To this Mr. Clayton replied, May 30, 1850, (*Ex. Doc. supra, page* 180,) referring to Mr. Adams's refusal to appoint a joint commission to determine and assess the damages claimed, and expressing surprise at the reappearance of these old claims.

To this M. de Figaniere replied, June 6, 1850, (*Ex. Doc. supra, p.* 185,) that the claims were of more recent date than one which had lately been revived by the American Government against Portugal, (alluding to the case of the privateer Armstrong, which had been captured in 1814, in Fayal, by the British. The American Government claimed damages from the Portuguese government, on the ground that the latter was bound to protect the neutrality of its port.)

On November 7, 1850, M. de Figaniere returned again to the charge, (*Ex. Doc. supra, p.* 153,) and laid before Mr. Webster, Secretary of State, a statement in support of the claims. He says, "upon the renewal of the old claims of the United States against Portugal," he desires to present these "vastly more important counter-claims." It is worthy of remark here that the President, in his annual message to Congress, December 24, 1849, referring to the old claims of the United States against Portugal, says, that "the revolutionary and distracted condition of Portugal in past times has been represented as one of the leading causes" of the delay in the adjustment of them.

The letter of M. de Figaniere to Mr. Webster, of November 7, 1850, containing a full and formal statement of the case against the United States, with a list of the vessels

captured, is a document of great interest and importance, as will be seen from the following extracts:

"The undersigned, of her majesty's counsel and minister resident of Portugal in the United States of America, has been instructed by his government to lay before the honorable Daniel Webster, Secretary of State of the said United States, the following statement in support of the claims of Portuguese subjects against the American Government, arising from captures of Portuguese vessels, with their cargoes, in the years 1816 down to so late as 1828, by privateers fitted out and equipped in ports of the United States, principally in that of Baltimore, and assuming to sail under the flag of South American insurgent States, especially that of *Artigas*.

"Upwards of sixty Portuguese vessels, with their cargoes, were captured or plundered, and such ships and cargoes were appropriated by the captors to their own use.

"The fitting out of these privateers at Baltimore was a matter of public notoriety, and many of the leading citizens there, including the sheriff and postmaster, were summoned before the courts as owners or interested in such privateers.

"It is well known that the noted Banda-oriental chief Artigas held no seaport, had no ships, no sailors, and the privateers assuming his unrecognized flag were mostly manned and commanded by citizens of the United States, and in some instances the officers held commissions in the navy of the United States.

"The undersigned begs leave to say, and he submits, that it was the duty of the United States Government to exercise a reasonable degree of diligence to prevent these proceedings of its citizens, and that, having failed to do so, a just claim exists on the part of the government of Portugal, in behalf of its despoiled subjects, against the United States, for the amount of the losses sustained by reason thereof.

"Mr. de Figaniere would here recall to the honorable Mr. Webster's attention the state of the negotiations between the two governments on this subject. So early as the year 1816 the Chevalier Corréa da Serra, his most faithful majesty's plenipotentiary, apprized Mr. James Monroe, the then Secretary of State, of these illegal armaments in Baltimore. In March, 1818, that minister claimed indemnification by the Government of the United States

for the losses sustained by Portuguese subjects from the captures made by the said privateers, to which application the Secretary of State, in a note dated the 14th of said March, replied that, 'The executive having used all its power to prevent the arming of vessels in its ports against nations with whom it was at peace, and having put into execution the acts of Congress for keeping neutrality, it could not consider itself obliged to indemnify foreign individuals for losses arising from captures upon which the United States had neither command nor jurisdiction.'

"The undersigned willingly admits that, if the executive of the United States had used *all its power* to prevent the arming of vessels within its territory and their sailing from its ports against the commerce of Portugal, no claim could have been set up, by or in behalf of Portuguese subjects, against the Government of the United States, but that the only remedy would have been against the wrong-doers in the courts of law of the United States. But in point of fact the fitting out of these privateers was so notorious that, by due diligence on the part of the Government and the officers of the United States, the evil might have been prevented.

"The Chevalier Corréa, in another communication addressed to the Secretary of State, dated July 16, 1820, renewed his application, and proposed that the United States should appoint commissioners, 'with full powers to confer and agree with her majesty's ministers in what reason and justice demand.'

"In a further letter from that minister to Mr. J. Q. Adams, dated 26th August of the same year, the names of the officers of the navy of the United States are given, who, in October, 1818, embarked and served on board the armed schooner "General Artigas." The said schooner sailed under the so-called Artigan flag, and cruised for many months on the coast of Brazil, capturing several Portuguese vessels, among others the Sociedade Feliz, which was brought to Baltimore.

"The names of said officers, as given by Mr. Corréa, were Lieutenants Peleg and Dunham, of Rhode Island, and midshipman Augustus Swartout, of New York, and Benjamin S. Grimke, of South Carolina.

"Mr. Adams, in a letter addressed to the Portugese minister, dated the 30th of September, 1820, declines the appointment of commissioners as proposed, and intimates that the Portuguese subjects who may have suffered wrongs,

have a remedy in the courts of justice, but that '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.' Mr. Adams adds, that in the war in South America, to which Portugal had for several years been a party, 'the Government of the United States had neither countenanced nor *permitted* any violation of neutrality by their citizens.'

"The undersigned, without intending to impute criminal negligence to the Government of the United States in this matter, may be permitted to observe, that citizens of the United States were permitted, whilst within their jurisdiction and under the control of the Government, to fit out armed vessels to go forth from the ports of the United States, filled with American citizens, to prey upon the commerce of Portugal.

"Her most faithful majesty's government and the undersigned will readily admit that the Government of the United States did not support or countenance these proceedings, which were in direct violation of the laws of nature, of nations, and of these United States; but it is conceived that the American Government was, to a certain extent, remiss in not using more efforts in suppressing these expeditions, and that a liability results from that remissness. In April, 1822, Mr. Jozé A. Grehan, chargé d'affaires of Portugal, in a letter to the Secretary of State of that day, requires that commissioners should be 'chosen by both governments, for the purpose of arranging the indemnities justly due to Portugese citizens, for the damages which they have sustained by reason of piracies, supported by the capital and the means of the United States.'

"To this application the Secretary of State replied, on the 30th of April, 1822, that he could not accede to the appointment of commissioners for the purpose stated, and says: 'It is a principle well known, and 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.'

"Mr. Webster will not fail to perceive, that the complaint is really grounded upon the acts of American citizens, committed within the jurisdiction of the United States, and within the reach of the control of their government; that is to say, the fitting out of armaments within the ports of the United States, to despoil Portugese commerce.

"This subject has, since the above date, been repeatedly renewed verbally, if not in the correspondence of Messrs. T. S. Courtancio, J. Banozo, Perura, and Torlades d'Azambuja, down to 1835; and upon the renewal of the old claims of the United States against Portugal, both the undersigned and his government have repeatedly adverted to these long standing and vastly more important counter claims."

In support of his view of the law of nations, he quotes Vattel and other authorities, and adds:

"It appears to the undersigned, that the only question to be examined is, whether the Government of the United States could, by the exercise of a reasonable degree of diligence, have prevented its citizens from going out of its ports in armed vessels to cruise against the commerce of Portugal, a friendly nation, with which the United States had ever been at peace, and had uninterrupted commercial relations."   *   *   *

"The public notoriety of these expeditions is easily shown. A reference to 'Niles' Register,' and other organs of public information published in those times, will suffice for this purpose; and nothing was more generally known at Baltimore, than that these expeditions were commonly fitted out at that port. Indeed, privateers were not only equipped in Baltimore, but they were accustomed to bring their captures there for sale. The Government of the United States might, by the exercise of due diligence, have become acquainted with the facts, and prevented the privateers from sallying forth.

"The chief Artigas did not possess a single seaport, as has been stated, and the so-called privateers gave no security that they would conduct their cruises according to the laws and usages of war, and bring in their prizes for adjudication. They were rather pirates than privateers, and it is respectfully submitted, the Government of the United States should have exerted itself so as efficiently to prevent their *repeated* and *long-continued* depredations. There were a large number of these so-called privateers, at least twenty-eight or thirty, preying upon the commerce of Portugal.

"The authorities of the State of Maryland were evidently negligent in permitting these warlike preparations in the port of Baltimore, and as no claim can be made by Portugal against that State, all complaints founded upon the negligence of the State authorities must, of course, be made against the Government of the United States, and

this government is therefore, as the undersigned conceives, liable for that neglect.

"As already stated, in some instances the privateers brought their prizes into the ports of the United States, and the cargoes were sold, and upon such cargoes duties were levied and paid as upon a regular importation. The undersigned conceives that justice demands these duties, with interest, should be returned to her majesty's government for the use of the parties interested in such cargoes."

A list of the vessels is given, and the loss is estimated to exceed $1,500,000 principal. Of course damages were not claimed for the prolongation of the war, the loss of the Colonies, &c.

WE REFUSE TO SUBMIT THE CLAIMS AGAINST US TO ARBITRATION, BUT PERSIST IN PRESSING OUR OLD CLAIM AGAINST PORTUGAL IN THE PRIVATEER ARMSTRONG CASE—THE EMPEROR OF FRANCE THE ARBITRATOR—THE DECISION AGAINST US.

M. de Figaniere, in his letter of June 6, 1850, offered, on behalf of his government, to leave to the arbitration of a third friendly and independent power all the claims on both sides. The offer of arbitration was accepted as to the claims of the United States against Portugal, but declined as to the claims of Portugal against the United States. Louis Napoleon, the president of France, was selected as the arbitrator, and he decided against the United States. An enormous amount of law learning was thrown away upon the emperor, who, finding that the captain of the privateer had been the aggressor by firing into the boats of a British man-of-war in the harbor, and then had gone ashore with his crew and demanded protection, considered that the United States had no case.* The an-

* When we are at peace, we hold lax doctrines as to the duties and obligations of neutrals; but when we are at war we find that neutrals have very limited rights, but almost unlimited obligations. This Armstrong case is an illustration of the elasticity of our principles. According to our doctrine in that case, a neutral is not merely bound to use "due diligence" to preserve its neutrality, it is liable if its neutrality should be superseded by superior

tiquity of this case was not considered by the State Department at Washington to be any barrier to the claim; but the more recent cases, which the Portuguese government desired to have examined, were treated as too old and fishy.

CURIOUS DOCTRINE PROPOUNDED BY MR. WEBSTER AS TO NON-LIABILITY, FOR MALFEASANCE, OF A STATE.

Mr. Webster gave no written reply to M. de Figaniere, but communicated orally to him that he repudiated the idea that the United States Government was liable for the conduct of the authorities of the State of Maryland.

(It will be recollected that the imprisonment of British colored seamen at Charleston, under the State laws of South Carolina, involved the same question.)

Mr. Webster further intimated that the American Government would not tolerate the further discussion of the claims in question; and, consequently, Portugal, with the

force of one of the belligerents. It is curious to observe how we shift our ground. There is no obligation on our part to prevent a raid on Canada, but poor little Portugal was under an absolute obligation to drive the British fleet out of the harbor of Fayal, or pay us for the damage inflicted by that fleet. That out Herod's Herod, and is only paralleled by the Alabama claims, to which it bears a remarkable family likeness.

How such a monstrous doctrine came to be propounded is a puzzle to those who do not know how astute litigious people are at making "points." There is, moreover, another explanation of the mystery. The commander of the British naval force in the port of Fayal, after the privateer had, without any just reason or provocation, fired upon and killed some men in one of his boats, was foolish enough at first to try to board the privateer, instead of laying a ship alongside of her, (he fearing the shots would injure the town.) Of course the boats were easily beaten off with great slaughter. Our people treated it as a battle between the privateer and the whole British squadron, in which the latter was defeated. They made a hero of the captain of the privateer, and his "claims" have been a popular theme ever since. They have not yet been finally disposed of, although he obtained a large sum of money and a vote of thanks from Congress. The claim is now against our Government, because they did not recover the damages from Portugal, and it is alleged that Mr. Webster neglected and mismanaged the case. He appears to have treated it as groundless. Our people, hearing but one side of the case, supposed that the Portuguese authorities, as well as the British, were in fault. This case shows the wisdom of leaving such disputes to arbitration. Upon *hearing both sides* the utter groundlessness of the claim was clearly established.

It will be observed that our Government was more moderate then than now. It confined the claim to the direct damages, instead of claiming that the war would have been shortened in duration if the career of this wonderful privateer had not been cut short through Portugal's non-enforcement of its duty as a neutral.

becoming humility of a small power, dropped her claims, and meekly submitted to an arbitration of the claims of her arrogant opponent.

WANT OF MUTUALITY OF OBLIGATION.

A question may now be raised, whether it is competent for the United States to be a complainant in a case like that of the Alabama; for, if the United States are not liable for the delinquency of a State, there is no *mutuality*, no obligation on our part to abide by the law which we call on other nations to be governed by.

WE ARE ESTOPPED BY OUR PRECEDENTS.

And a further question is pertinent, whether we are not morally and equitably *estopped* by our own doctrines and precedents from maintaining that there has been any breach of international duty by Great Britain.

THE TRUE DOCTRINE OF NEUTRAL OBLIGATION THAT OF JOHN Q. ADAMS.

Although we refused to recognize in any way the claims of Portugal, we have adopted the doctrine for which they contended, and seek to apply it to others, although we repudiated the application of it to ourselves. We now, for the purpose of the Alabama claims, recognize the proposition laid down in M. de Figaniere's dispatch, derived from the authorities referred to by him, that a neutral is bound to the exercise of due diligence to prevent its citizens from going out of its ports in armed vessels to cruize against the commerce of a friendly power. And then we carry that proposition much further.

The passage quoted by M. de Figaniere from Vattel, (*b.* 2, ch. 5, sec. 72–77,) does not support the position, that a neutral is under an absolute obligation to prevent its citizens from aiding or abetting either of the belligerents. It merely asserts that the neutral sovereign ought not to willfully permit his subjects to do injury to the subjects of

another State. The duty of a neutral is to observe neutrality between the belligerents, not to participate in the hostile operations of either party. And there are even exceptions to this rule: for instance, where the neutral power is bound by treaties, previous to the war, to permit one of the belligerents to seek an asylum in its ports, or giving right of way through the country with its troops.

The position taken by Mr. Adams is not that the Baltimore privateers *could not have been restrained by diligence.* Such a position would have been contrary to the obvious truth. If the state and federal authorities had employed a sufficient number of detectives and active officers, the acts complained of could have been prevented—acts which were very different indeed from the mere sale of a ship to a belligerent. The fact is, that the prosperity of Baltimore was largely owing to those privateering operations. What Mr. Adams contended was, that the acts complained of were not done or authorized by the government nor willfully permitted by it, and that there was no complicity or connivance on its part and that as the courts were open for the prosecution of the offenders if they should come within the jurisdiction and for the restitution of the captured property if it should be brought into the United States, the Government could not consider itself bound to indemnify the parties injured; and he asserts that "no *nation can in principle nor can in practice hold itself responsible*" under such circumstances.

It is a noteworthy fact, that *no nation ever has acknowledged a liability such as that claimed in the Portuguese and Alabama cases.*

THE PORTUGUESE CASE COMPARED WITH AND SHOWN TO BE MUCH STRONGER THAN THE ALABAMA CASE.

In our case against England, it cannot be shown that any one of the Confederate cruisers was fitted out and equipped in England: they were officered by Americans, and they were got out of the English ports by stratagems and deceptions, and were fitted out and equipped afterwards.

When reasonable evidence was offered by the American minister against suspected vessels, they were seized. In most cases the suspicion proved to be unfounded, and in some cases the English government purchased suspected vessels against which no direct proof could be obtained—purchased them to prevent the possibility of their being used by the Confederates. The English government favored the North throughout as much as possible, without giving to the Confederacy *a casus belli.*

Contrast this with the Portuguese case. There the privateers were armed, equipped, and manned in United States ports: the officers and crews were Americans, the owners were Americans, the business was carried on openly, no seizures were made to stop the expeditions. It is impossible to imagine a stronger case, and if in any case a nation could be held liable on principles of international law for the unauthorized acts of its citizens beyond its jurisdiction, we were liable in that case. But Mr. Adams says that "by the universal law of nations, the obligations of the American government extend no further" than the limits defined by him.

If a claim could be made against a nation because some of its citizens have committed acts which *could have been prevented by skillful and active detectives and officers*, the peace of the world would be constantly disturbed, and the smaller states continually victimized. A great power would be apt to resent as an insult the charge that it had violated its international duty, but the small and weak powers would have to submit.

REFUTATION OF THE STATEMENTS IN OUR "CASE" RESPECTING THE PORTUGUESE CLAIMS.

Our "case" professes to give the substance of the correspondence between our Government and that of Portugal upon the claims above referred to. It does not give the true substance, but only a deceptive version of that correspondence, as will be clearly seen upon a comparison of the above abstract with that given in our "case," which is

a bundle of equivocations, concealments, and misrepresentations.

It will be observed that the Portuguese minister applied for amendments of our laws, and he also asked our government to stop the privateering, and failing in that, to indemnify the victims. But according to the correspondence, as abridged in our "case," the Portuguese virtually confined themselves to requests for amendments of the laws, which were complied with, and on the whole they were immensely delighted with our performances. And our "case" asserts that "the government of Portugal, during the whole correspondence, *offered no evidence to prove that captures had been made* by armed vessels illegally fitted out, equipped, or armed in the United States, nor even statements of facts tending to lead to the discovery of such evidence, which were not at once used for the purpose of *detaining such vessels* or of *punishing the guilty parties.*"

We did not detain such vessels at all, and as to the alleged punishment of the guilty parties, M. de Figaniere, in his note of November 7, 1850, says that in every instance "the claims of the Portuguese subjects presented in the United States against private individuals, citizens of the United States, who were concerned in such captures, were unavailing." And yet in our "case" we actually boast of the "*measure of justice*" applied by the United States to Portugal!

What does our Secretary of State mean, when he asserts that Portugal offered "*no evidence?*" Does he mean that scores of privateers could be publicly fitted out, manned, and commanded by Americans; sail from and return to our ports, and bring in and sell their prizes in our ports; and that it was for the Portuguese minister to hunt up witnesses to prove these notorious acts, and that without such action on his part we cannot be accused of a want of "due diligence," although we did nothing to repress these public operations? Can it be asserted that the argument of our

Secretary of State on this part of the case is fair, candid, and truthful?

Our "case" says: "The claims lay buried until they were exhumed by Mr. Figaniere in 1850, as an offset to the General Armstrong case." It was, of course, right for us to "exhume" the Armstrong case, which dates back to 1814, giving as a reason for so doing that the unfortunate condition of Portugal for many years had kept the case in abeyance, (this was alleged in the President's message to Congress;) but it was very unreasonable for the Portuguese to make any reference to their claims against us, arising in 1817, 1818, 1819, and 1820, and down to 1828. The intrepid audacity of this logic is unparalleled.

It is very evident that the real reason why the Portuguese claims slumbered so long, is to be found in the fact, that all liability was positively denied on the part of the United States, on the simple ground that the law of nations did not make them liable. That question was not examined by the Portuguese government until we, by raking up the old Armstrong case of 1814, put them on the defensive. Upon an examination of the authorities on international law, it was found that the position taken by our Government in the Armstrong case was inconsistent with that taken by them against the Portuguese claims; and the question as to the duties of neutrals is brought under review, not only in our claim, but also in the Portuguese counter claims. To shut out the latter, whilst prosecuting the former, was unreasonable and unjust.

No reason for declining the proposed arbitration of the Portuguese claims could be offered other than that given by Mr. J. Q. Adams, which ignores the doctrine upon which we are now pressing the Alabama claims.

Our doctrine in the Armstrong case was, that Portugal was bound *absolutely to protect the neutrality of the harbor of Fayal.* This was denied by M. de Figaniere, who reviews the authorities referred to in support of our claim, and shows that they have no application to the case in hand. He says: "Such an obligation cannot exist. And, indeed,

it has always been contended by the United States that they are not bound to keep up a military and naval force large enough to prevent their own citizens from making inroads on foreign territory," referring, apparently, to the invasions of Canada, Texas, &c., by "sympathizers."

The perusal of M. de Figaniere's note to Mr. Clayton will leave the reader in a state of amazement that any, even the most litigious lawyer-ridden people in the world, should have persisted in such a claim.

The court of arbitration at Geneva will get from it a good inside view of the reckless way we have of getting up cases againt other countries. It shows our State Department to be litigious and overbearing in the highest degree.

AN EARLY PRECEDENT AGAINST OUR PRESENT DOCTRINE.

In our "case" reference is made to the treaty of November 19, 1794, between England and the United States, providing for compensation for the seizures of British ships made by French privateers fitted out in our ports, and to a case which arose under that treaty, viz, the case of the Jamaica, a vessel which had been captured by one of these privateers; but the prize not having been brought into our ports, it was decided that the case was not covered by the words of the treaty. The decision is quoted in our case, as follows:

"The counsel for the claimant seemed to suppose that the obligation to compensate arose from the circumstance of the privateer's having been originally armed in the United States; but as there is not the smallest evidence to induce a belief that in this or any other case the Government *permitted*, or in any degree *connived* at, such arming, or failed to use all the *means in their power* to prevent such equipment, there is no ground to support a charge on the fact that the armament originated in their ports."

It is not alleged that the equipment of the privateer could not have been prevented if the State and Federal authorities had employed a considerable number of detectives, and an adequate force to overcome all resistance. It

is not alleged that the equipment was secret or furtive; on the contrary, it is well known to have been open and public, and in fact defiant. But as the means of repression in the hands of the Government were very small, it was truly stated that it had used all the means in its power, and, therefore, that there was no breach of good faith, which alone was regarded as culpable.

The true question is not whether "due diligence" has been exercised in the sense contended for in our "case," but whether good faith has been observed. In our "case" we contend that it is for Great Britain to show that the acts of British citizens complained of "*could not have been prevented.*" It is clear that if the *onus probandi* was really with us in like manner in the case of the Jamaica and in the Portuguese cases, we ought to have compensated the sufferers.

The doctrine contended for by our Secretary of State in the case of the privateer Armstrong, submitted to the arbitrament of the Emperor of the French, that a small, weak power is bound to prevent the capture of a vessel within its waters or pay for it, is shown by the argument of M. de Figaniere in his diplomatic note to our Government, under date of July 9, 1850, to be untenable. (Ex. Doc. H. R., No. 35, 1st Sess., 32d Cong., page 101.)

If that doctrine were sound, then it would be correct to say that a nation cannot plead the weakness of its police force, which was in reality our plea in the case of the Jamaica just referred to, and in the Portuguese cases.

According to our "case," the "due diligence" which we say the law of nations requires," is the use of "*the most energetic measures*" to prevent the act forbidden? not the mere exercise of the means within the power of the Government, if they are inadequate, but the means which might by stringent legislation and lavish expenditure have been made available. We have never held ourselves bound by such a rule, and it is certain that we will never submit to its application to our conduct, whether other nations choose to be bound by it or not.

IMPOLICY OF THE NEW RULE AS TO "DUE DILIGENCE"—ITS INCOMPATIBILITY WITH OUR USAGES, PRINCIPLES, AND INSTITUTIONS.

It is unadvisable and impolitic for us to declare the law of nations to be, that a nation shall be held responsible for the unauthorized acts of its citizens, if it can be shown that the government of that nation could have prevented such acts.

If we admit that to be the law of nations, or if we agree by treaty to be bound by such a rule, we shall undoubtedly have many serious reclamations against us. As observed in the report of the Committee on Foreign Affairs, before referred to:

> "The institutions and traditions of the American people compel sympathy for the humblest of the human family when struggling for liberty. Their literature is rank with the spirit of oppressed races, grappling with tyranny, and nations fighting for independence. Their faith in these ideas has been strengthened by the results of their own struggle. It is impossible for them not to wish well to the cause of patriots everywhere."

England, protesting that the rules agreed upon, as governing the arbitrators, are "not a statement of principles of international law, which were in force at the time when the claims" arose; nevertheless, "in order to evince its desire of strengthening the friendly relations between the two countries, and of *making satisfactory provision for the future*," agrees that the arbitrators shall assume, that England undertook to act upon the principles set forth in their rules.

What are those rules?

They are in substance, that it is the duty of a neutral government "to *use due diligence*" to prevent the departure of any vessel from its ports, intended to carry on war against a country at peace with such neutral government.

What right had the President and Senate, in the exercise of the treaty-making power, to alter the law of nations, and impose upon the country an onerous obligation, pro-

vocative of innumerable and interminable foreign quarrels?

What is "due diligence?"

In the case presented by our Secretary of State, we are made to maintain that the question does not depend upon the municipal laws of the accused country: it is not whether those laws have been fairly executed. It is, whether the acts complained of could have been prevented by diligence. In our argument in that case, we ignore the restraints upon constitutional governments, which cannot exercise any arbitrary control over ship-builders and merchants.

We are to be responsible, according to that argument, for the State laws, when they do not prohibit public meetings of sympathizers, and also for the consequences of the liberty of the press.

By the law of nations, a belligerent has no cause of complaint against a nuetral, on account of the unauthorized acts of individual citizens; no nation is obliged, in deference to the belligerents, to keep a large and efficient force to prevent such acts.

The peculiar character of our political system is especially ill-adapted to the new doctrine.

OUR LATEST REPUDIATION OF THE RULE.

At this very moment we have passing before our eyes an illustration of the danger of the anti-American doctrine. It appears that, having a large quantity of arms left on hand at the termination of our civil war, our government desired to sell the same, and did go on selling up to the commencement of the war between France and Germany, and then continued to make-sales just as they had done before.

Mr. Sumner propounds the proposition in the Senate that it was the duty of our Government to inquire whether the purchasers of the arms *intended to sell them* to either of the belligerents; and he holds, that unless they pursued the inquiry with diligence, we are guilty of a violation of international law.

This is a natural sequence to the new doctrine advanced on our behalf in the Alabama case; a doctrine which we should abandon at once, if we do not want to be always in hot water.

Mr. Sumner's doctrine as to the moral obligations of neutrals is stringent; he would make it unlawful for our citizens to sell arms to a poor, oppressed people, having no standing army and no arsenals. He appears to consider that a people who are armed to the teeth have a vested right to their military superiority.

The debate on the alleged sale of arms by our Government to France brings out in bold relief the unsoundness of the proposition in our "case," that the *onus probandi* lies upon England, to prove that she used due diligence to prevent the sailing of ships from her ports which were adapted for war purposes, and which were purchased for the use of the Confederates.

Just as we are urging that argument, a question arises in the Senate whether the good name of the American Government had been compromised by the sale of arms, most of which (not all) got into the hands of the French.

The Government laid down the rule, that it would sell no arms to the known agents of either belligerent. Prussia wanted to be a purchaser direct from the Government and so did France, and both were refused.

The assailants of the administration maintained that, "if arms were sold to parties where there was an eminent probability that they would find their way into the hands of the belligerents," then the rule laid down by the Government was a mockery; and Mr. Schurz argued that either there was "a blindness, compared with which the blindness of the mole is clairvoyance, or else it was a piece of transparent jugglery."

On the other hand, the supporters of the administration relied upon what they considered to be the self-evident rule, that the Government was presumed to have kept faith, and that it was to be taken for granted that our Government was blameless in these transactions, and the proof that

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it was not blameless was with those who had preferred the charges.

Is it to be maintained that such favorable presumptions are to be raised only in favor of our Government, and that foreign governments are to be treated in a different way, in the style of our "case," and deemed guilty, unless they can prove their innocence?

OUR CLAIMS TOTALLY UNFOUNDED.

Having disposed of the basis of the extravagant doctrine upon which our claims are founded, it is unnecessary to examine the superadded points of the "case," such as the following:

1. That municipal laws putting restraints upon individuals, to prevent their interfering in foreign wars, or aiding either or both parties, must be fully enforced, or there is a *casus belli.* (That clearly is not so in relation to many laws, such as those restricting trading with the belligerents.)

2. The directions given to the colonial governors as to the treatment of the cruisers of both parties created obligations on the part of England towards the United States, so that, if undue hospitality was accorded to a confederate cruiser, England must pay for the captures made by that cruiser afterwards.

3. That a complaint made by the British government against the confederate authorities, that they organized conspiracies to evade British laws, sustains a complaint of the United States against England, that she connived at such proceedings.

4. That English ports were made a *base* of *military operations* against the United States by the sale of confederate cotton and the application of the proceeds to the purchase of arms, and that those ports were the *base* of military *expeditions* against the United States, as some vessels adapted for war purposes got away from them, and were afterwards converted into war ships.

The fallacy of these propositions is sufficiently appa-

rent on their face. They simply serve to show a rollicky independence of common sense in the statement of the "case:"

In the presentation of "the base of operations" theory, there is a convenient obliviousness of our own conduct very recently in relation to the supply of arms to Mexico and France. Of course, New York was not a *base* of that kind for France; but Liverpool, under the like circumstances, (with the single but conclusive point of difference, that the United States are the parties complaining,) was a base, a centre, a pivot of that great iniquity, the supply of arms to the Confederates, and therein there was a gross violation of the law of nations, as laid down by us for this particular occasion.

In our "case" we treat it as a self-evident proposition, that it was wicked to do anything which "deprived the United States of the benefit of their superiority at sea;" and our "case" solemnly propounds that, if such conduct is sanctioned, it will lead to the horrible consequence, that "a weaker party hereafter may draw upon the resources of a strong neutral, in its effort to make its strength equal to that of its antagonist." It is assumed, as a matter of course, that a people weak in military power, but strong in pecuniary resources, in consequence of having pursued the profitable arts of peace instead of the art of war, should succumb at once to the dictation of a Bonaparte, and not shock the moral sense of American expounders of the law of nations, by striving to maintain freedom by the use of base lucre.

ADDITIONAL OBJECTIONS, FROM THE AMERICAN POINT OF VIEW, TO THE NEW THEORY OF INCIDENTAL DAMAGES.

The question now agitating the public mind is, whether we shall, after admitting that our old cherished doctrine, as laid down by John Q. Adams, is untenable, go the length of insisting that the law shall be declared by the board of arbitrators to be so stringent, that we shall in future cases have to pay all the indirect losses which may be sustained

by the people of a foreign country through the acts of our filibusters and sympathizers, when it can be shown that by diligence the State and federal authorities could have prevented their movements.

For example, suppose funds are openly collected in New York to supply men with money and arms to assist rebels, or even a regularly-recognized belligerent power in Cuba or Mexico, or Canada: shall our Government be liable to pay, not only for all the damage these sympathizers may do, but also for all the indirect and consequential injury which may be sustained by reason of their acts—for example, the prolongation of the war, the loss of commerce, &c.

Of course, being a powerful nation, we could with impunity ignore any such claims against us, and no doubt would do so. If, for instance, there should be an invasion of Canada by a few thousand Irishmen, after many public meetings, proclamations of "head centers," and public collection of funds, &c., all of which might have been easily prevented, will our Government pay, not only for the barns and houses destroyed, and the horses and cattle, &c., captured, but also the expenses occasioned by the military preparations to repel this invasion, and the losses sustained by tradesmen, mechanics, and farmers, by the interruption of their business?

We repeat the question, what is to become of the smaller powers, if such a doctrine is to be recognized? As to the great powers, they will never submit to any application of it to themselves, but the smaller ones could all be devoured by it.

THE ARBITRATION.

England has agreed to submit to arbitration the question, whether she was guilty of negligence in respect to the escape of the Alabama from an English port; and also whether she is liable for the acts of certain other confederate cruisers. As to the Alabama, it will be recollected that she was not fitted out and armed as a ship-of-war

when she slipped out; but that she received her armament afterwards, at a place beyond English jurisdiction. The claim is set up against England on the ground that, if due diligence had been used, it would have been found out that it was intended to have her used as a confederate cruiser. England is willing to have the case adjudged upon the principle that she shall be held responsible, if such alleged negligence can be shown. England does not admit, however, that such liability was imposed by the law of nations existing at the time; she understands the law of nations to be as expounded by Mr. J. Q. Adams in the Portuguese case; but she appears to have been willing to have such a doctrine established at our instance, as a precedent for our future guidance.

According to the New York Herald, February 6, 1872—

"It was thought by many that England had cunningly inveigled this country into the new rules regarding the duty of neutrals," and "the treaty was a cunning piece of strategy on the part of England to save herself in the future."

Perhaps she supposed she could afford to pay something for our adoption of the new doctrine. Her diplomatists may have imagined that it would tend to prevent any more filibustering expeditions, or any active sympathy against her in any of her wars with other nations.

THE ADVANTAGE OF THE NEW RULE TO ENGLAND IN FUTURE CASES PROBLEMATICAL.

It may be questioned, however, whether it would not have been better for both parties if they had let the old law remain undisturbed, relying upon such municipal laws as each nation might from time to time deem it right to enact and enforce for the preservation of neutrality. Such matters should be left to the good will of the nations, and should not be hampered by entangling contracts. So soon as an absolute obligation is created, we have a fruitful source of quarrels.

The same remark applies to extradition treaties. They

ought to be abolished, and each nation left to legislate as it pleases in respect to the extradition of alleged offenders. This legislation might be conducted on the principle of reciprocity. When there is a treaty obligation to surrender fugitives, there are frequent causes of dispute. For instance, if Kossuth had been demanded by Austria, or John Mitchell by England, or members of the Paris commune by France, would they have been given up?

WHY ENGLAND HAS GOOD RIGHT TO NOTIFY US THAT SHE WILL NOT GO INTO THE DISCUSSION OF THE QUESTION OF INCIDENTAL DAMAGES—THE EFFECT OF THAT NOTIFICATION—FAMILIAR ILLUSTRATIONS.

If England notifies us that she does not consider the arbitrators to have power to award indirect damages, we shall, if we proceed with the arbitration, do so with full knowledge that any award of indirect damages will be a nullity, as it will be disregarded by the English government. The submission to arbitration is a purely voluntary agreement; and if there is an irreconcilable misunderstanding about its scope and meaning on any point of real importance, it should be abandoned. But our abandonment of the arbitration, on the ground that England will not submit to an award of the indirect damages claimed by the American lawyers in the case, would be frivolous, as the point is not an important one, the claim being manifestly untenable.

If the submission of counter claims against the United States should be in general terms, and the arbitrators should award the payment of the Confederate bonds held by foreigners, we should unquestionably treat the award as void, whether we notified or not our intention so to do during the progress of the case. But it would be courteous to intimate on the presentation of the claim that it would not be submitted to in any event.

The case may be compared to an agreement to submit a question of indebtedness to an arbitrator. The alleged debtor may, for the sake of peace, be willing to leave the question of indebtedness to the decision of a mutual friend;

but what is the alleged debtor to do, if he finds that his opponent claims before the arbitrator, not merely the debt and interest, but indirect damages for the non-payment, such as the profits he might have made in a certain speculation with the money, if it had been paid when due; the losses he has sustained by being declared a bankrupt, which he could have averted, if he had received the money in question?

The alleged debtor may have been willing to have the comparatively unimportant question of the indebtedness left to the decision of the party selected, but may not be willing to place his whole fortune at the disposal of the arbitrator. If he be an honorable man, he will at once notify the other party that he will regard any action of the arbitrator on such claim for indirect damages as an excess of his power and jurisdiction, and will decline to go into the evidence on that subject. He will give this notification, in order that there may be no misunderstanding leading to a fruitless inquiry. He will not remain silent until the decision of the arbitrator is given, and then, if it be given against him, declare it void. If the award be subject to judicial scrutiny, of course the arbitrators can be kept within the scope of the inquiry actually submitted to them, and the protest in such a case will be a mere act of courtesy, or to save time.

That the American commissioners did not expect or intend to raise before the arbitration the question now raised by the "case," in respect to remote consequential damages, sufficiently appears from the fact that, by the terms of the treaty, the assessors are to inquire what amount of damages, if any, ought to be paid for each vessel; which excludes the idea that any amount could be awarded to be paid for the prolongation of the war, seeing that such prolongation could not be attributed to the operations of any single vessel.

It is not reasonable to suppose that England intended to submit the question to the decision of arbitrators, whether she was bound to pay some thousands of millions of dollars

for an alleged neglect of police duty. She might not apprehend an adverse decision, but *she might well object to an admission*, that the new-fangled doctrine of the liability of nations for the unauthorized acts of its citizens *could be expanded to such an absurd extent.*

THE STATE DEPARTMENT ARRAIGNED FOR ITS GROSS INCONSISTENCY ON QUESTIONS OF INTERNATIONAL LAW—NOTABLE ILLUSTRATIONS GIVEN.

The case has now fallen into the hands of lawyers who are struggling, not for truth, but for victory.

We have had too much law logic and special pleading in our diplomacy, and it has too often been the practice for our Secretaries of State to indulge in long legal dissertations, in which we will find a total disregard of consistency, of established principles, and of American policy. Thus, in the dispute with England about the alleged violation of our neutrality laws by the British minister and consuls, Mr. Cushing wrote, in the shape of diplomatic notes, a large law book, in which the leading proposition is, that it is a violation of the law of nations for an English official to advertise in the United States an invitation to British citizens to return to their native country. That was called "seducing" the inhabitants of the United States: Mr. Cushing claiming, virtually, that we held a monopoly of the right of seduction. Foreigners could throw off their allegiance to their native country, and could rightfully be invited or seduced to do so; but it was wrongful to seduce any body in the United States to go into a foreign military service: not because the act of Congress forbade it, but because "the law of nations" denounced it—a proposition palpably untenable.

That doctrine served to snub the English and delight the Russians. Of course it was completely ignored by us when we wanted men for our armies, and we got a good many from the British provinces, without any regard to the seduction theory.

Then, in relation to the declaration of the European

powers against privateering, we had from our State Department a long legal essay, in which it was affirmed to be the modern law and usage of civilized nations, that private property should not be interfered with in war by land, and it was inferred that private property should enjoy immunity at sea, and the adoption of that rule was suggested by way of amendment to the rule against privateering. (Letter of Mr. Marcy, Secretary of State, to M. de Sartiges, the French minister at Washington, dated July 28, 1856, on the declaration of the maritime powers of Europe concerning maritime law, privateering, &c.) Soon after we showed our adherence to this doctrine by destroying the dwelling-houses and crops of the inhabitants of the seceded States, after fully acknowledging them to be belligerents. And it will be found, on referring to Kent's Commentaries, Vol. 1, Lecture 5, (7th edn.,) that when we were at war with Mexico, Mr. Marcy, then being Secretary of War, revoking previous instructions, directed General Taylor to levy contributions on the Mexicans, "without paying or engaging to pay therefor;" whereupon the annotator observes, that "the principle of kindness and liberality towards the enemy seems to be of a *flexible character*." As flexible, it would appear, as the principles of our statesmen when dealing with the law of nations.

SUGGESTED SUPERVISION BY CONGRESS—THE CASE LAID BEFORE THE ARBITRATORS HIGHLY OBJECTIONABLE, AND CALCULATED TO CREATE ILL-WILL.

There is only one thing we have been always consistent in, and that is our steady adherence to an illustrious precedent. With us the single question has always been, whose ox has been gored, and we have applied the law accordingly. The vagaries of our State Department in matters of international law require repression, and it is high time for Congress to take the matter in hand.

A good deal of dangerous popularity hunting has been indulged in by those who have had the management of our foreign relations. The public have been excited by the

recital of imaginary grievances, and wrought up to a pitch of rage and indignation pretty much as the client who, on hearing his wrongs eloquently depicted by his lawyer, became much affected and exasperated, he not having previously been aware of the depth of his grievances.

Most especially has this been the case in relation to complaints against England, it being known that the public mind was highly excitable on the subject of any supposed wrong-doing of that power.

The arbitration was agreed to by England, "in order to evince its desire to strengthen the friendly relations between the two countries;" and now we have a wild, irritating case or brief made up in the State Department, and this libel has been translated into several languages and circulated amongst foreigners. How that is to promote good will between the two countries is not perceived.

Suppose Spain to be complaining of invasions of Cuba by large bodies of American citizens, organized in the United States, or England to be complaining of a Fenian raid into Canada or hostile demonstration on the frontier, how would we treat the complaint, if it were couched in language charging our Government not merely with remissness, but with complicity or connivance and tricky dodges and evasions? And suppose that, in support of this insulting charge, the speeches of a few congressmen and articles in newspapers should be cited as sustaining it, would not our press and our people ridicule the reasoning and resent the insult? And yet that is the style in which our "case" is got up. It is a style which we would not tolerate if applied by others to ourselves; and it is especially improper where, for the sake of peace, the complaint is left to arbitration.

The argument of the case in respect to incidental damages will be regarded all over the world as preposterous.

It is said that Mr. Evarts and Mr. Cushing are not responsible for "the case;" that they disapprove of it; and that it is entirely the work of Mr. Davis, the Assistant Secretary of State. Whether that be so or not, it should

not be allowed to remain as the authoritative exposition of our case. Congress should not allow the Department of the Secretary of State to run riot on our foreign relations. In fact, a vigorous supervision should be exercised particularly by the Senate over the department.

THE TRUE CONSTRUCTION OF THE NEW RULE WHICH WE SHOULD CONTEND FOR.

The rule that a nation shall be held to due diligence does not import that a nation is bound at all events to keep its citizens from injuring those of another country. The unlawful acts of a few individuals can hardly be prevented by the ordinary means of preserving the public peace.

The fact that individuals have violated the law does not raise the presumption of a want of due diligence on the part of the Government.

This reasonable construction of the rule which England has agreed to be bound by may prevent us from maintaining our case or even presenting a plausible argument upon it. The fact is, we got up a false clamor in a time of public excitement, and we ought not now to endeavor to bolster it up by unfair arguments, such as the proposition in our "case," "that the burden of proof will be upon Great Britain to show that" the acts complained of "could not have been prevented."

One illustration of the construction of the new rule contended for in the case submitted by us to the arbitrators will suffice. The Florida was one of the Confederate cruisers obtained in England. While she was in England no evidence affecting her of unlawful intention was obtained, but the case argues thus: "That her departure from the jurisdiction of Great Britain *might have been prevented*, after the information furnished by Mr. Adams, would seem to be beyond doubt. And that a *neglect to prevent such departure was a failure to use the 'due diligence,'* called for by the second clause of the first rule of the treaty, obviously follows the last conclusion."

Let us apply this reasoning to the case of the Hornet.

The Spanish consul at New York informed the district attorney there that the Hornet was on the eve of departure from New York, upon an illegal expedition, in violation of the proclamation of the President of October 12, 1870. The district attorney replies, December 8, 1870, to the Spanish consul, that there was no proof authorizing him to seize the Hornet; says he understands she is going to Nassau; and adds, "what her intentions may be on reaching that port are things that remain unproven."

Now, is the idea to be tolerated, that we should be liable for the acts of the Hornet, because, after the information furnished by the Spanish consul, the departure of the vessel might have been prevented. It is too absurd for serious discussion.

WHY THE CLAIMS SHOULD HAVE BEEN ABANDONED UPON THE RECONSTRUCTION OF THE UNION.

There is considerable force in Lord Redesdale's argument, that we are equitably estopped from setting up the claims in question, because the wrong complained of was perpetrated by those with whom we are now in full partnership, viz, the southern States.

From whatever point of view we examine the matter, the peculiarity of the combination or union of the States —sovereign States in many respects; but forming one nation—becomes important. Its bearing upon the recognition of the Confederate States as a belligerent power cannot be overlooked, nor can the fact that the States once separated *de facto* are now readmitted into the Union, and form nearly one half of the body called the United States, the complainants in the case before the Geneva board of arbitration; and if an amount of money be awarded to be paid by England to the United States, the very States whose cruisers made the captures complained of will be the joint recipients of the compensation paid for those captures, and will have the joint control and disposition of the same.

An indemnification for the captures made by the Confederate cruisers could have been obtained from the con-

quered party, just as Germany has recently exacted an indemnification from France.

The United States have extinguished this right by restoring the old Union of the States. That act renders the further prosecution of the claims inequitable, unseemly, and indecorous.

That event makes a great deal of difference in the question, seeing that, when the ex-Confederate States were held as conquered provinces, it could not be said that they were participants in the receipt of the money.

In addition to the curious fact that some of the complainants are the perpetrators of the injuries complained of, we have another extraordinary feature, the consequence of the modern practice of marine insurance, viz, there are scarcely any parties really aggrieved.

This fact conduces, with many others, to show the purely litigious character of the claims in question. Even if the United States Government should obtain an award of damages, it would not know what to do with them, as most of the parties whose property was captured were covered by insurance, and the insurance companies were indemnified by higher rates of insurance—war rates. In some cases the underwriters were British companies. Are the British to be called upon to pay a second time in those cases?

WHO ARE THE PARTIES INJURED.

The alleged moral or equitable obligation of a neutral, to indemnify the sufferers from its neglect, is the only foundation upon which the direct claims can possibly be raised; they cannot be sustained on the ground that the neutral should be *punished* for its negligence.

Our Government presents these claims on the assumption that the damages that may be recovered on account of the captures specified shall be distributed amongst the sufferers by those captures. Let it be shown that there are scarcely any parties entitled to receive anything on that account, and it follows that the complainants have no

standing in court on most of the direct claims. The case then stands, in the main, upon the claims for fanciful, imaginary, consequential, or indirect damages, sustained *by the United States* now composing the Union, and the acts out of which those claims arise are the acts of some of those States in carrying on a war with the others!

If any other country should get up such a case against the United States, it would be treated here with universal ridicule and contempt. It would not be submitted to arbitration; it would not be listened to.

HOW FAR THE DEFENCES ARE LIMITED BY THE TREATY.

It may possibly be contended that, by the terms of the treaty, the case is narrowed down to the single question, whether "due diligence" was used.

That argument attaches too much importance to the provision in the treaty, that the arbitrators should assume that the English government had undertaken to act upon the principles set forth in the rules specified.

Suppose it appears that her conduct will not bear that test, but it also appears that the complainants have, nevertheless, no just cause of complaint, should the award be in favor of the complainants?

The arbitrators should not award damages to the United States in a case where it is clear that they would refuse to pay damages if they were the defendants. They should not award damages to be paid to the wrong-doers. There is nothing in the provisions of the treaty to compel the arbitrators to work such an injustice.

On the contrary, the treaty expressly provides, that the arbitrators shall be governed by the rules specified, "and by such principles of international law, *not inconsistent* therewith, as the arbitrators shall determine to have been applicable to the case."

The rule that a neutral shall be bound to use due diligence does not conflict, for example, with the proposition that the party doing the injury complained of ought not to

claim damages from another party, on the ground that he might have prevented the perpetration of that injury.

The arbitrators will be governed by international law and general principles of right.

Moreover, in ascertaining what effect is to be given to England's obligation to use "*due* diligence," it is proper to see what degree of diligence the complainants recognize as "due diligence." For the purpose of this controversy there can be no more due to them than from them. Hence the pertinency of the inquiry which has been pursued in this article: What do the United States consider to be "due diligence," in cases where their citizens commit wrongful acts, to the detriment of the people of other countries. It is very evident that they do not hold themselves bound to insure against those acts—do not recognize their liability for them, although it can be shown that they might have been prevented by careful precautions and diligent supervision.

THE ARBITRATION BENEFICIAL TO US, AND A GOOD PRECEDENT, EVEN IF THE DECISION BE AGAINST US.

It may possibly be suggested that this discussion shows that the arbitration should be abandoned. Not so, unless, indeed, the claims are abandoned as untenable.

The public did not understand the real merits of the controversy, having heard but one side of it, but was willing to leave the case to arbitration. Suppose the decision be against us: would it not really be better for our interests in the future than a decision in our favor? And should we not learn by this experience that there is a great advantage in hearing both sides in disputes between nations as well as in controversies between private individuals?

That was shown in the case before referred to, which was left to the decision of Louis Napoleon. Let us have another illustration of it. If the result of the proceedings shall tend to check the universal one-sided rantipoling of the American press, on all questions in dispute between

this country and others, it will be a most wholesome and beneficent operation.

The public will hear in an authorized form the British side of the case, established by due proofs carefully examined, and will also hear the reasons of the arbitrators for their decisions. The second sober thought of our people, unclouded by passion, and our true love of justice, will insure a cheerful acquiescence in the award.

WHY ENGLAND DID NOT BREAK THE BLOCKADE—SENTIMENT VS. POLICY.

It should be borne in mind that if England had broken the blockade, France would have joined her, and it would have been impossible for the North to have continued the war. England had but to stretch forth her hand, and the North and South would have been forever separated, and England, by that act, would have secured her dominions in America—dominions which, amalgamated with the mother country, would have made her strong forever. The temptation was very great, but it was resisted and overcome. Under the influence of a great and noble sentiment, she sacrificed her cotton manufactures and much of her commerce, and cast aside her jealousy of the great, and to her dangerous, growing power of the United States. Whether she acted in this with the prudence which usually governs nations in their foreign policy remains to be proved. Certain it is, no nation ever before made such a sacrifice for a sentiment. The court and the liberal party sympathized with the North, regarding the secession of the South as a slave-owners' rebellion. Even Manchester, the great sufferer from the blockade, which prevented the supply of cotton, advocated the cause of the North.

HINTS TO THE ANTI-BRITISH WAR JOURNALS.

And now, we are told, we ought to make war upon England, upon the pretext that she aided the confederacy.

Before embarking in that war, it may be well to con-

sider what may be the action of the ex-Confederate States and the Pacific States in certain contingencies.

Even the noisiest of the war journal, after proving to its own satisfaction what a simple matter a war with England would be, and how easy it would be to despoil her of her American possessions, all at once made the following discovery:

> "If England dare not go to war with us from the danger she would expose herself to from Ireland, still less dare we go to war with England, knowing how easily she could fan the discontent of the South into a new rebellion, which, with the aid of England, might defy all our power to subdue." (*N. Y. Herald, February* 10, 1872.)

As to the position of England, the supposed danger from Ireland appears to be purely imaginary; for other reasons, she is evidently most anxious to avoid war with the United States, and is ready to make any reasonable concessions for the sake of peace. Let us show a similar spirit.

THE SCOPE OF THE ARBITRATION—HOW TO BE DETERMINED—THE CLAIMS FOR INDIRECT INJURY EXCLUDED BY THE PROTOCOLS AND BY THE TERMS OF THE TREATY.

The refusal of our Government to withdraw the claims for indirect damages would not necessarily lead to the abandonment of the arbitration by Great Britain.

Let the arbitrators be asked by both parties to declare, in the first instance, what they consider to be the extent of their authority.

It should not be assumed by the British government that the arbitrators will wrongfully usurp jurisdiction over a matter not submitted to them. It will be time enough for the British to retire from the case if they find that the true limits of the arbitration, as they understand the contract, are to be overstepped. They have given timely notice that they *will not go into a hearing* of the case in that event. This course of proceeding is of common occurrence in arbitrations of disputes between private individuals.

If the arbitrators shall consider that the terms of the

treaty leave open for discussion the question of liability for what is called in the statement of the American Commissioners to the High Joint Commission, on 8 March last, "INDIRECT *injury* in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion," then Great Britain may with propriety say, that there has been a misunderstanding: that the treaty would not have been made had each party understood the meaning put by the other party on the language used, and therefore that the mutual consent required for a contract is wanting.

It follows that the arbitration in that case is abandoned.

If, on the other hand, the arbitrators shall consider that the claims in question are not within the submission, *then, if that decision be satisfactory to the United States*, the arbitration may proceed. But if the United States shall be dissatisfied with that construction of the contract to submit the matters in dispute to arbitration, then the arbitration must be abandoned.

This mode of dealing with the preliminary question is perfectly compatible with the dignity of both countries. The question as to the real scope of the arbitration depends partly upon what was said upon the negotiation for the reference, but mainly upon the terms of the treaty.

At the conference held on the 8th of March, the American commissioners stated that the cruisers "which had been fitted out *or* armed *or* equipped, *or* which had received augmentation of force in Great Britain *or* in her colonies," had caused "DIRECT *losses* in the capture and destruction of a large number of vessels, with their cargoes, and in the heavy national expenditure in the pursuit of the cruisers, and INDIRECT *injury* in the transfer of a large part of the American commercial marine to the British flag," (&c., as above quoted;) that the claims for the loss and destruction of private property amounted to about fourteen millions;

"that the cost which the Government had been put to in the pursuit of the cruisers could easily be ascertained by certificates of Government accounting officers; that in the hope of AN *amicable settlement no estimate* was made of the INDIRECT *losses*, without prejudice, however, to the right to indemnification on their account *in the event of no such settlement* being made."

The American commissioners at the same time "proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States in satisfaction of all the claims and the interest thereon."

The British commissioners replied, denying all liability, but proposing to leave the question to arbitration. The American commissioners then stated that they "could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the arbitrator, in the consideration of the facts, could be first agreed upon." (See Protocol 3 May, reciting what had been done.)

That matter being afterwards arranged, the arbitration was agreed upon.

It is conceded by the British government that the claims for the expenses of the pursuit of the cruisers are within the submission, because they were *expressly mentioned in the negotiation for the reference*, and classed amongst the "*direct* losses." (Whether such classification is correct or not is immaterial.)

But it is contended that the claims for the "*indirect injury*" are impliedly abandoned by the intimation that no estimate of it had been made, the estimate being confined to the direct losses, in the hope that there would be AN *amicable settlement* of the matter. That is to say, upon an amicable settlement the claim was to be about fourteen millions, with someting added for the cost of chasing the cruisers; if no amicable settlement was arrived at, the claims for thousands of millions were to be held up *in terrorem*. Here it at once appears to be highly improbable that the claims

thus to be abandoned were to be retained, if a friendly mode of settling the difficulty should be agreed upon.

It is argued on the British side that, although a particular proposal, that, if accepted, would have been an amicable settlement, was rejected, yet that such proposal was followed by a counter proposal of an arbitration, which was agreed to, and that this arbitration constituted an "amicable settlement," in another form, it is true, than that first proposed, but fully within the meaning of that expression, as used by the American commissioners. In support of that argument, they refer to the preamble of the treaty, which reads thus: "The United States of America and Her Britannic Majesty, being desirous to provide for an *amicable settlement* of all causes in difference between the two countries," &c.

This, it is said, shows that what was agreed to was considered at the time to be an "amicable settlement" of the dispute. In reply to this, it is said that the arbitration is not in itself an amicable settlement. Suppose that point to be well taken, let us carry the inquiry a stage further. Suppose an award to be made by the arbitrators, and that award to be submitted to, performed, and abided by: will there not then be an *amicable settlement?* Of course that will be so. And, as it was held forth that an amicable settlement would shut off the claims for the indirect injury, of which no estimate whatever was made, they cannot with propriety be presented now.

Probably no one supposes that the English commissioners considered that these vague, unestimated claims were a fit subject for arbitration. It could not possibly have been intended to give such a wide range to the arbitrators.

Having thus considered what transpired on *the negotiation for the reference*, let us next see whether *the terms of the treaty* are compatible with the presentation of the claims for the "indirect injury."

By the treaty, after reciting the differences between the two governments, "growing out of the acts committed by

the several vessels," it is agreed that the said claims shall be referred to arbitration, and article 7 provides, that "the said tribunal shall first determine as *to each vessel separately*," whether Great Britain has failed to fulfill her duty. In case the tribunal find that Great Britain has so failed, it may award a sum in gross for all the claims. Article 10 provides that in case of the omission of the tribunal to follow up its decision by such award, then a board of assessors "shall be appointed, to ascertain and determine what claims are valid and what amount or amounts shall be paid by Great Britain to the United States on account of the *liability arising from such failure*, AS TO EACH VESSEL, according to the extent of such liability, as decided by the arbitrators."

The meaning of articles 7 and 10, taken together, is that, if the arbitrators find the alleged default to have been committed, they may award a sum in gross, on account of the liability, for all the vessels; and, if they fail to do so, the *assessors* are to ascertain the liability as to each vessel. Evidently it was considered that the assessors should not be intrusted with the large discretionary power vested in the arbitrators to lump all the damages together. But the *damages to be ascertained are the same in both cases*—the arbitrators may lump them: the assessors must separate them—that is all the difference.

And now the question arises whether, in ascertaining the amount to be paid on account of the failure as to any particular vessel, the indirect injury by "the transfer of a large part of the American commercial marine to the British flag," &c., &c., could be apportioned and computed by the asssessors, and put down to the account of that vessel. Clearly not; and therefore, by the terms of the treaty itself, the claims in question are inadmissible.

It may be said that the British commissioners should have had the treaty made plainer and clearer than it is. On the whole it appears, however, to be as satisfactory a bargain as could reasonably be expected.

It was deemed necessary to pacify the monster which had been generated by popular ignorance and fury, and it was probably considered by the British commissioners that even a bargain rather one-sided was better than nothing; and so it was, and much credit is due to them for accomplishing as much as they did.

It was considered by many intelligent people that, if England could, by the payment of four or five millions of pounds sterling, allay the excitement on this subject in America, and at the same time get a treaty restraining its citizens from filibustering, it might not be a bad bargain. Such treaties are, however, as we have already shown, of doubtful utility.

Taking a careful survey of the whole matter, there is nothing to show that it was bad policy on the part of the English diplomatists to submit the question of liability with the retroactive new rules of law to govern the arbitrators, and even to choose arbitrators who might adopt the continental ideas of international law, in preference to the doctrines which England and the United States have adhered to, affirming the right of neutrals to supply arms, &c., to belligerents.

There was an imperative necessity for getting rid of the contention. The popular clamor might, perhaps, have been allayed in another way, if it had been thought of and if the United States Government had been desirous of getting rid of the dispute. Thus, if it had been pointed out that the restoration of the seceded States—the ex-belligerent—to the Union had entirely changed the *status* of the controversy and obliterated the claims, the public would have accepted that solution of the difficulty.

THE DOCTRINES OF THE "CASE" SHOULD BE REPUDIATED BY CONGRESS—THE CONSTITUTIONALITY OF THE TREATY—HOW TO GET RID OF IT.

The rules adopted by the treaty, and made binding on this country, (if the treaty be valid,) are, as we have already shown, highly objectionable. It is impossible for us to

abide by them, especially if they are to be construed as our Secretary of State construes them.

Congress should interpose, and, at the very least, should adopt resolutions to the effect, that the "case," as presented, is not approved of. That course would be pursued by the British Parliament, in a case where the action of the government should be contrary to public opinion; and although there is an important difference between the British constitution and ours, seeing that our Government may persist in its course in defiance of Congress, whereas the English government must defer to the House of Commons, yet that forms no sufficient reason why the executive should be allowed to act as it pleases, without supervision or rebuke.

It is conceived that Congress might with great propriety resolve that the claim for indirect injury, and also the doctrine of the "case," as to due diligence, should be abandoned.

The obnoxiousness of the new rules might be very much mitigated by our putting a reasonable construction upon the words "*due* diligence," but the objection would still remain, that we ought not to be called upon to use any diligence at all to prevent our people from building and selling ships available for war purposes, because, as shown by the House Committee's report on neutral relations, before referred to, the effect of such a restriction is to deprive our ship-builders of their rights, and "to perpetuate the subjugation of States without naval force to the rule of dominant maritime nations."

Although these rules refer only to ships and ports, the principle affirmed by them imposes upon us the exercise of diligence to prevent the departure by land of persons sympathizing with a people fighting for their liberty, to which end we must repress all public meetings and combinations of such sympathizers.

The treaty-making power has undertaken to lay down the law of nations in exact opposition to the unani-

mous opinion of the House of Representatives, as shown by Banks's bill on neutral relations. The *direct* representatives of the people are thus regarded as of no consequence, which reminds us of Queen Elizabeth telling the House of Commons not to trouble themselves with affairs of State, but to attend to their own business.

Whilst adverting to that bill, to amend the neutrality laws, the question may be asked, why it was framed so as to make it unlawful to sell an *armed* ship, whilst declaring it to be lawful to sell a ship adapted for war purposes, and also to sell the armament separately? It will be perceived that although by that bill it is unlawful to furnish, fit out, *and arm* a ship, (all these three things must be combined to constitute the offence,) it is perfectly lawful to build and sell a ship adapted for war purposes.

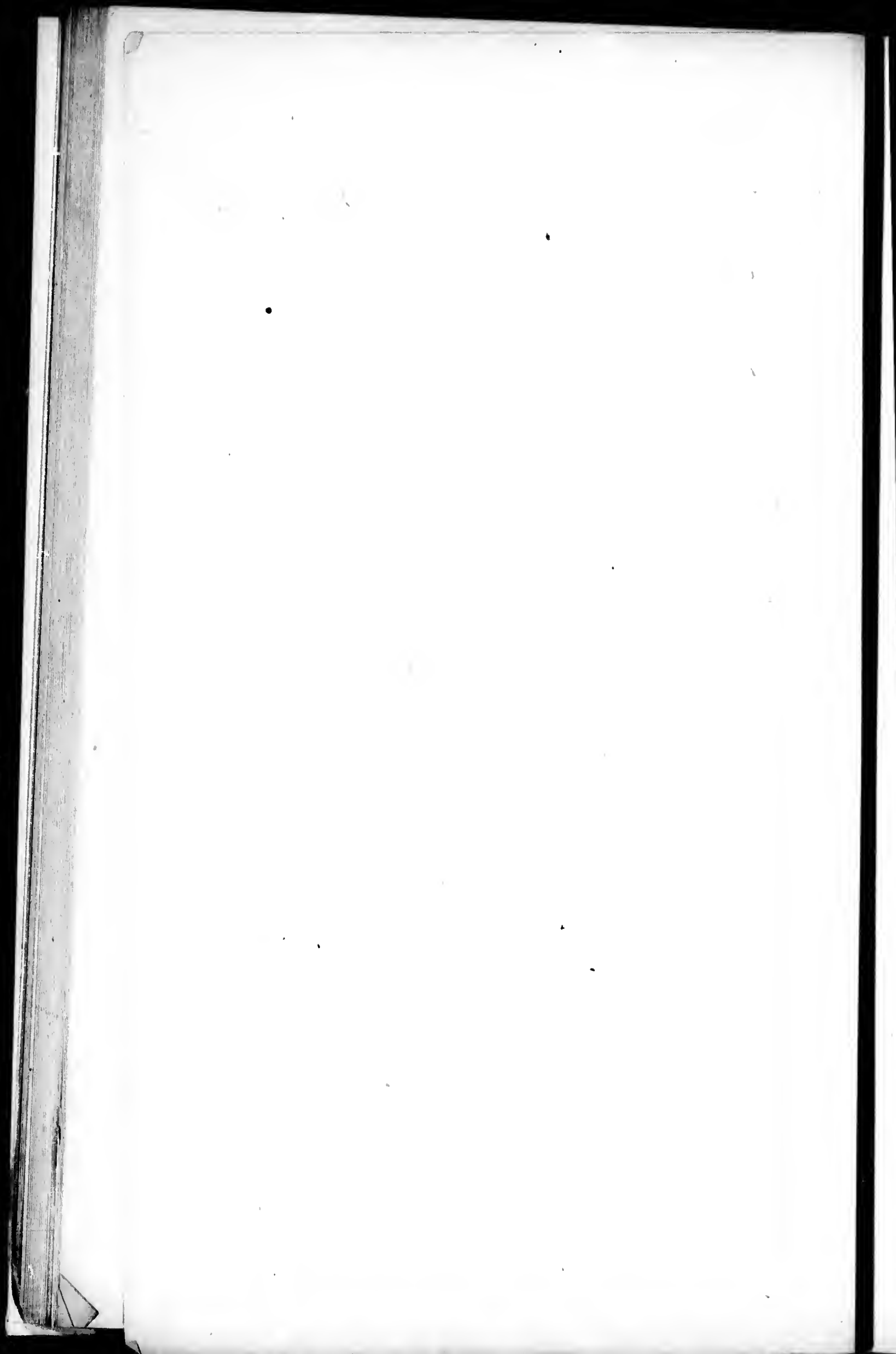
That is directly antagonistic to the last portion of the first rule, which runs thus: "A neutral government is bound, first, to use due diligence to prevent the fitting out, arming, OR equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace, and also to use like diligence to *prevent the departure from its jurisdiction of any vessel intended to cruise* or carry on war as above, such vessel having been specially adapted in whole or *in part*, within such jurisdiction, to *warlike use*."

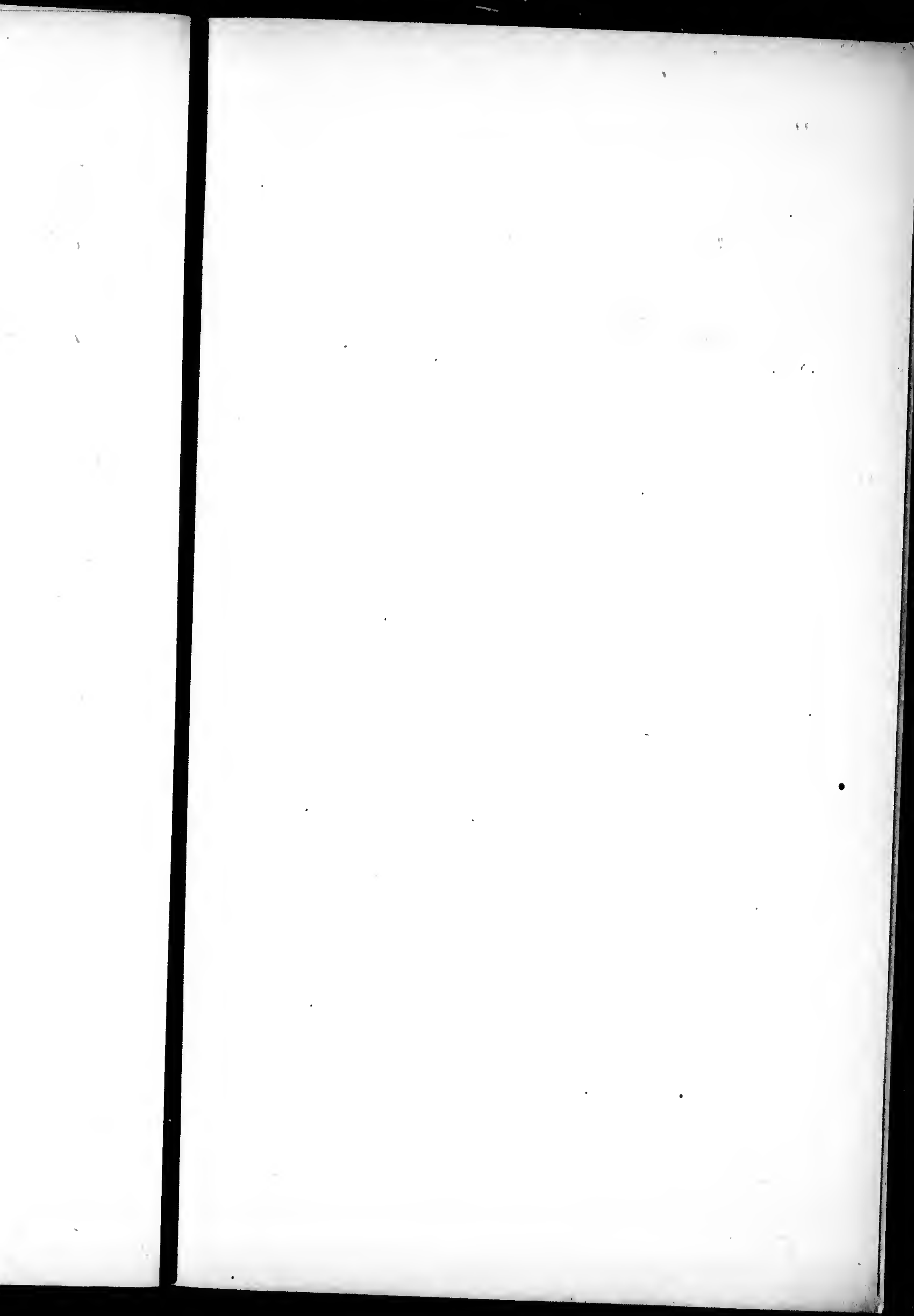
The question as to the constitutional power of the President and Senate to make laws of the highest magnitude and importance, without the consent of the House of Representatives, deserves grave consideration.

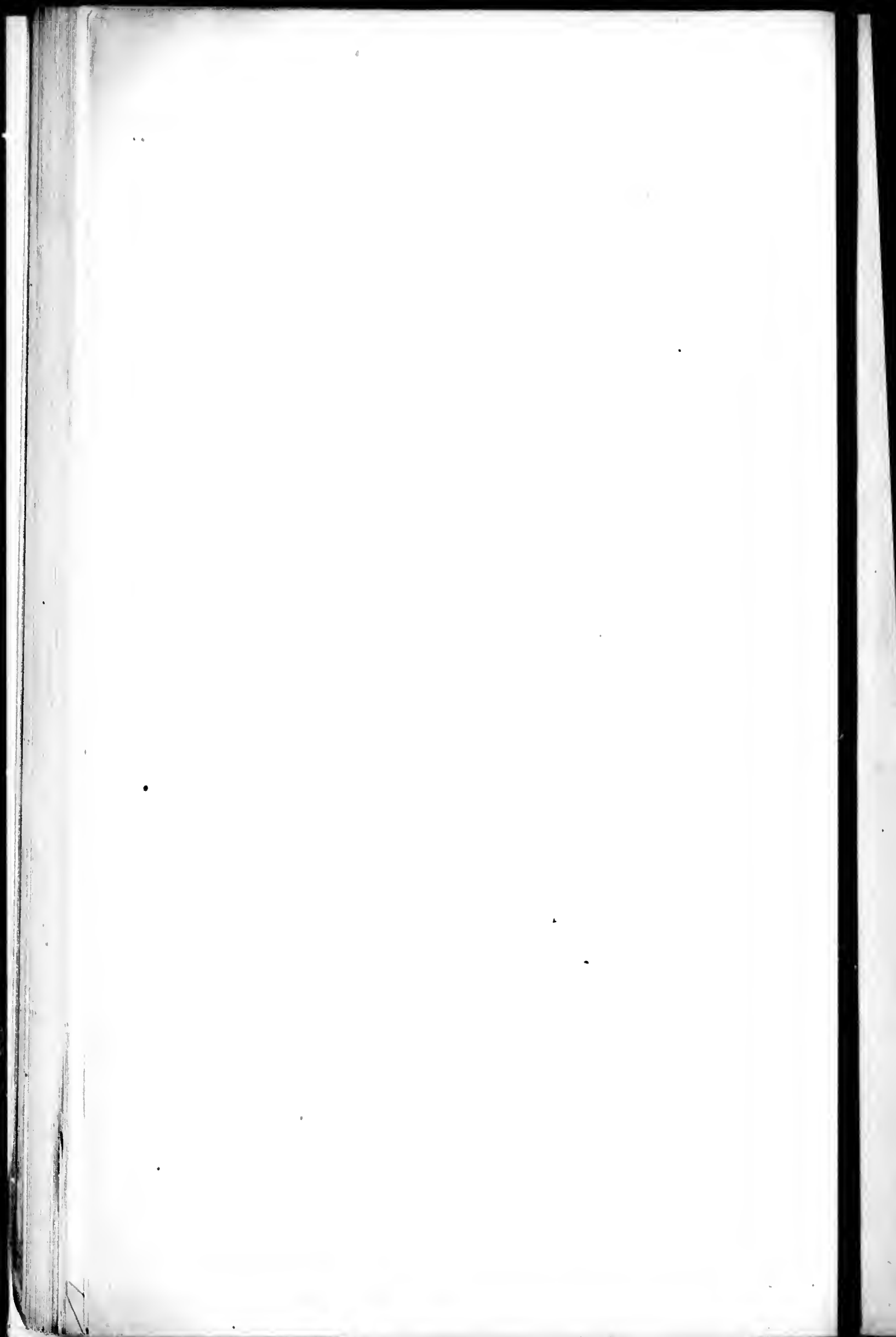
Our claims are clearly unjust. Why should we adhere to them? It is open to us now to declare that, even assuming them to have been rightful *when first presented*, they have become *extinguished by the restoration of the Union*, wherefore, we ask, that the treaty shall be abrogated. England, no doubt, would consent to that, upon a withdrawal of the claims.

That is the best way to get rid of the obligation sought to be imposed by the treaty, article 6 providing that the two countries shall observe the new rules as between themselves in future, and invite other powers to accede to them. Hereafter, when it is desired to make new laws, the action of the House of Representatives should be invoked.

It may be found necessary to get rid of these new rules, even if we have to go the length of declaring that the President and Senate had no power to impose those shackles upon the nation.







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