who act in obedience to the executive instructions, *in cases within the Act*, are completely justified in taking possession of and detaining the offending vessel, and are not responsible in damages for any injury which the party may suffer by reason of such proceeding. Surely it never could have been the intention of Congress that such a power should be allowed as a shield to the seizing officer, in cases where that seizure might be made by the ordinary civil means? One of the cases put in the section is, where any process of the Courts of the United States is disobeyed and resisted; and this case abundantly shows that *the authority of the President was not intended to be called into exercise unless where military and naval forces were necessary to ensure the execution of the law.* In terms, the section is confined to the employment of military and naval forces; and *there is neither public policy nor principle to justify an extension of the prerogative, beyond the terms in which it is given.* Congress might be perfectly willing to entrust the President with the power to take and detain, *whenever, in his opinion, the case was so flagrant that military or naval forces were necessary to enforce the laws;* and yet, with great propriety deny it, where, from the circumstances of the case the civil officers of the Government might, upon their private responsibility, without any danger to the public peace, completely execute them. *It is certainly against the general theory of our institutions to create great discretionary powers by implication, and, in the present instance, we see nothing to justify it.*"

In how many instances it has been found necessary, or thought proper, to call into exercise this power of the President of the United States, it would not be material for the present purpose to inquire. It seems enough to observe, that in order to call this power into exercise at all in any case of a vessel equipped or adapted for war within the United States, there must be a state of facts established or deemed capable of being proved in due course of law, constituting an infringement of the prohibitory and penal clauses of the Act of 1818, and producing a forfeiture of the vessel by reason of that infringement; and that, in any corresponding case under the British Foreign Enlistment Act of 1819, the Queen of Great Britain possessed similar and not less effective powers, to fortify the ordinary administration of the law, in case of need, by the use of extraordinary force, as was exemplified by the employment of a force under the command of Captain Inglefield, at Birkenhead in 1863, to prevent the forcible removal of the iron-clad rams from the Mersey.

3. The 10th section of the Act of Congress of 1818 requires security to be given by "the owners or consignees of *every armed ship or vessel* sailing out of the ports of the United States, belonging wholly or in part to citizens thereof," against the employment of such ship or vessel "*by such owners*, to cruize or commit hostilities against any foreign Prince," &c. This clause is inapplicable to any ship, not actually *armed* within the jurisdiction of the United States; and, even as to any vessel so armed, no security is required, unless it is owned by citizens of the United States; nor, even as to a ship so armed and so owned, is any security required against her employment to cruize or commit hostilities by any foreign Power, to whom it may be transferred after leaving the waters of the United States.

4. The 11th section of the same Act authorizes and requires the collectors of United States Customs "to detain *any vessel manifestly built for warlike purposes*, and about to depart from the United States, *of which the cargo shall principally consist of arms and munitions of war*, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed *by the owner or owners* to cruize or commit hostilities upon the subjects, citizens, or property, of any foreign State, &c., until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section."

The power thus given to detain ships "manifestly built for warlike purposes," when circumstances "render it probable that they are" intended to be employed "to cruize or commit hostilities upon the subjects, &c., of a foreign State," &c., is confined to the single case, *in which such ships have a cargo, principally consisting of arms and munitions of war;* and even in that case it ceases, upon security being given, in the same manner as under the 10th section, *i.e.*, security against the employment of the ship *by her then existing owners* to cruize or commit hostilities against any foreign State, leaving her perfectly free to be so employed by any foreign owner to whom she may afterwards be transferred.

24. Testimonies of Mr. Bemis and Mr. Seward on this subject.

It is honourable to the candour of Mr. Bemis, an American writer, not partial certainly to Great Britain (some of whose controversial writings have been brought before the Arbitrators as part of the evidence of the United States, in vol. iv of their Appendix, pp. 12-32 and 37-46), that he pointed out, in a work published in 1866, from which extracts will be found in Annex (B) to the British Counter-Case (pp. 149, 150), the inferiority (not superiority), for preventive as well as for other purposes, of the Act of Congress of 1818 (the only law then, and now, in force in the United States for the maintenance of their neutrality) as compared with the British Foreign Enlistment Act of 1819. Nor was there any reason to complain of the fairness of Mr. Seward, when