(disregarding, as in his view practically unimportant, all those points of detail in respect of which these two Acts differed from each other) he described the laws made for this purpose in the United States on the 9th April, 1863, as "in all respects the same as those of Great Britain," and on the 11th of July, 1863, as "exactly similar." (See Annex (A) to the British Argument or Summary, page 40.) But it is certainly astonishing, after these acknowledgments (and in view of the facts above stated) now to find these differences between the British and American Statutes insisted upon, in the Argument of the United States, as amounting to nothing short of the whole difference between a merely penal Statute and a law intended, and effective, for the purpose of prevention; and as constituting, on that account, a sufficient ground for inferring, *à priori*, a general want of due dlligence on the part of Great Britain, with respect to all the matters covered by the present controversy.

25. Argument of the United States from the British Foreign Enlistment Act of 1870.

Some reference must here be made to an argument, derived by the Counsel of the United States from the fact that a considerable change and amendment of the British law has since been made, and that new preventive powers (of a kind not found, either in the Act of Congress of 1818 or in the British Act of 1819) have been conferred upon the Executive Government of Great Britain, by a recent Statute passed by the British Legislature in 1870. The Legislature of the United States has not yet thought it necessary or expedient to introduce any similar or corresponding provisions or powers into the law of that country; it cannot, therefore, be supposed that the Government of the United States deems such provisions or powers to be indispensable to enable a constitutional Government, the Executive of which is bound to act according to law, to fulfil, with due diligence, its international obligations. No one can seriously contend that because, after experience gained of the working of a particular law or administrative machinery of this nature, certain points may be found, on a deliberate examination, in which it appears capable of being improved, this is a proof that it was not, before these improvements, reasonably adequate for the fulfilment of any international obligations to which it may have been meant to be subservient. In all improvements of this kind, it is the object of wise legislation not to limit itself by, but in many respects to go beyond, the line of antecedent obligation; the domestic policy and security of the State which makes the law, and the reasonable wishes, as well as the strict rights of foreign Powers, are proper motives and elements in such legislation. No nation would ever voluntarily make such improvements in its laws, if it were supposed thereby to admit that it had previously failed to make such due provision for the performance of its public duties as other Powers might be entitled to require.

26. Illustrations of the doctrine of due diligence, from the history of the United States.

With respect to the light which is thrown upon these questions by American history, it is, in the first place, to be observed that the violations of neutrality which the Government of President Washington took measures to prevent, did not include the mere building or sale of vessels adapted for war, for or to a belligerent, within the territory of the United States, or the sending abroad of such vessels. They consisted (in the words of Jefferson) in "the practice of commissioning, equipping, or manning vessels in ports of the United States to cruize on any of the belligerent parties."*

Next it will be seen from that history that the Government of the United States, having made (as it considered) just and reasonable provision by its laws for the fulfilment of its international obligations, always, both before and after 1817-18, referred to those laws, and to the evidence and procedure required by them, as the proper measure of the diligence which it ought to use when foreign Governments complained that ships had been or were being fitted out or dispatched from ports of the United States for the war service of their enemies or revolted subjects. Of the truth of this statement, examples will be found in the letters of Mr. Mallory to Don Antonio Villalobos (16 December, 1816), Mr. Rush to Don Luis de Onis (March 28, 1817), Mr. Fisk to Mr. Stoughton (September 17, 1817), Mr. Adams to Don Luis de Onis (August 24, 1818), Mr. Adams to the Chevalier de Serra (March 14, 1818; October 23, 1818; September 30, 1820; and April 30, 1822); all of which are in the IIIrd Volume of the Appendix to the British Case (pages 100, 106, 120, 129, 150, 157, 158, 160), also in the letters of District Attorney Glenn to the Spanish Consul Chacon (September 4, 1816), and to Secretary Monroe (February 25, 1817), and of Secretary Rush to Mr. Mallory and Mr. McCulloch (March 28, 1817), which are among the documents accompanying the Counter-Case of the United States (Part II, pages 40, 53-56, 61, and 62); and in those of Attorney-General Hoar to District Attorney Smith (March 18, 1869), and to United States' Marshal Barlow (May 10, 1869), among the documents accompanying the Counter-Case of the United States (Part III, pages 743 and 745-747); and in the Circular of Attorney-General Hoar

* British Appendix, vol. v, p. 242.