

and prevent (though they did prevent in most cases) the violation of the law, the experience of the British Government, in this respect, was only the ordinary experience of all Governments, with respect to the occasional success and impunity of every species of crime.

VIII.—*Results of the Administrative System, and of the practice with respect to evidence of the United States in similar cases.*

In a question of due diligence between Great Britain and the United States, it cannot, with any show of justice or reason, be considered irrelevant, that the general system and principles, with respect to evidence and otherwise, on which the British Government acted throughout these transactions, were substantially the same as those which have been usually and in good faith acted upon, in similar cases, by the Executive Authorities of the United States. A neutral Government, though it ought spontaneously to use all proper means of discovering and preventing violations of law, which are really within its power, may, in many cases, not have the same means of knowledge which the agents of a foreign Government (to which those illegal acts would be dangerous) may happen to possess; and, when its information proceeds from those agents, it is both natural and reasonable that they should be requested to furnish evidence in support of their statements. In transactions of this kind (as Mr. Dudley stated to Mr. Seward in his first letter about the Florida, February 4, 1862, with respect to that vessel) “there is much secrecy observed;” and, when this happens (as in ordinary cases of crime), the preventive powers of the law cannot be called into activity, without some timely information; and the persons who give that information are usually able, and may properly be requested, to produce some evidence in its support, if such evidence is really forthcoming.

31. Necessity and propriety of seeking evidence from those who give information.

Mr. Jefferson, in his letter to Mr. Hammond, dated the 5th September, 1793, (annexed to the Treaty between Great Britain and the United States of the 19th November, 1794), after promising to use all the means in the power of his Government to restore British prizes captured by vessels “fitted out, armed, and equipped in the ports of the United States,” and brought into any of those ports by their captors after the 5th June, 1793, and acknowledging the obligation to make compensation for such prizes, if such means for their restitution should not be used, added the following just and reasonable remarks:—

32. Mr. Jefferson's letter of September 5, 1793.

“Instructions are given to the Governors of the different States to use all the means in their power for restoring prizes of this last description, found within their ports. Though they will, of course, take measures to be informed of them, and the general Government has given them the aid of the Custom-house officers for this purpose, yet you will be sensible of the importance of multiplying the channels of this information, as far as shall depend on yourself or any person under your direction, in order that the Governors may use the means in their power for making restitution. Without knowledge of the capture, they cannot restore it. It will always be best to give notice to them directly; but any information which you shall be pleased to send to me also, at any time, shall be forwarded to them as quickly as distance will permit.”*

When the questions of compensation, claimed by the owners of captured British ships, which had not been restored according to this letter, came for decision before the Commissioners under the Treaty of 1794, no such claim was allowed, except when the claimant had substantiated his legal right to have the prize restored by a regular judicial proceeding, properly conducted before the proper Court of the United States: which, of course, threw upon him, in all such cases, the burden of proving, by legal evidence, the illegal outfit and armament, within the jurisdiction of the United States, of the capturing vessel.†

33. The onus imposed upon British claimants against the United States by the Commissioners of Claims under the Treaty of 1794.

Extracts are here subjoined from some of the letters of the various authorities of the United States (to which reference has been already made), during the wars between Spain and Portugal, and their revolted Colonies in 1816—1820; and, more recently, at the time of certain designs against Cuba, in 1869. These will be found to throw some light upon the functions and powers of the District Attorneys and Marshals of the United States, and on the practical rules, by which the exercise of their functions and powers has always been governed.

34. Uniform reference of the Executive authorities of the United States in similar cases, to legal procedure, and the necessity for legal evidence.

On the 4th September, 1816, Mr. Glenn (District Attorney for Maryland) wrote to the Spanish Consul (Chacon), in answer to certain representations made by him:—

“I must beg leave to suggest, that my powers are merely legal, and not political. I have already the power, when I am officially informed, in a legal manner, of any violation of the laws of the United States, to institute a prosecution against the offenders, and conduct the same to a final issue; and I

* British Appendix, vol. v, p. 256.

† Case of the Elizabeth: British Appendix, vol. v, p. 319–328.