

that she had undertaken, when the present claims arose, to act upon the principles set forth in the three Rules, though not admitting them to have been then in force as rules of international law. In 1798, Great Britain came before the Commissioners of Claims under the Treaty of 1794, with an actual undertaking by the United States to use all the means in their power to restore all British prizes brought into ports of the United States, after a certain date, by any vessel illegally armed within their jurisdiction, and with an acknowledgment of their consequent obligation to make compensation for such, if any, of those prizes as they might not have used all the means in their power to restore. The undertaking of Great Britain, now to be assumed by the Arbitrators, is conditional upon the existence of "*reasonable grounds for belief*" of certain facts by the British Government in the case of each of the vessels for which Great Britain is sought to be made responsible. The undertaking of the United States, in 1794, was also dependent upon certain conditions of fact. What was the decision of the Commissioners in the case of the Elizabeth? (British Counter-Case, pages 29, 30, and British Appendix, vol. v, page 322):—

"From this examination of the letter which is given to us for a rule (Mr. Jefferson to Mr. Hammond 5th September, 1793), it results that it was the opinion of the President, therein expressed, that it was incumbent on the United States to make restitution of, or compensation for, all such vessels and property belonging to British subjects as should have been—first, captured between the dates of June 5th and August 7th within the line of jurisdictional protection of the United States, or even on the high seas; if, secondly, such captured vessel and property were brought into the ports of the United States; and, thirdly, provided that, in cases of capture on the high seas, this responsibility should be limited to captures made by vessels armed within their ports; and, fourthly, that the obligation of compensation should extend only to captures made before the 7th August, in which the United States had confessedly forborne to use all the means in their power to procure restitution; and that, with respect to cases of captures made under the first, second, and third circumstances above enumerated, but brought in after the 7th August, the President had determined that all the means in the power of the United States should be used for their restitution, and that compensation would be equally incumbent on the United States in such of these cases (if any such should at any future time occur) where, the United States having decreed restitution, and the captors having opposed or refused to comply with or submit to such decree, the United States should forbear to carry the same into effect by force.

"Such was the promise. In what manner was that promise to be carried into effect? It was not absolute to restore by the hand of power, in all cases where complaint should be made. . . .

"No, the promise was conditional. We will restore in all those cases of complaint *where it shall be established by sufficient testimony that the facts are true which form the basis of our promise*—that is, that the property claimed belongs to British subjects; that it was taken either within the line of jurisdictional protection, or, if on the high seas, then by some vessel illegally armed in our ports; and that the property so taken has been brought within our ports. *By whom were these facts to be proved? According to every principle of reason, justice, or equity, it belongs to him who claims the benefit of a promise to prove that he is the person in whose favour, or under the circumstances in which the promise was intended to operate.*"

XI.—*Special questions remaining to be considered.*

These are the arguments, upon the subject of the diligence generally due by Great Britain to the United States, with reference to the subjects to which the three Rules of the Treaty of Washington relate, and the principles according to which that diligence is to be proved or disproved, which it has been desired by Her Britannic Majesty's Counsel to submit to the Arbitrators. There remain some other special questions, which require separate examination:

1. Whether the diligence due from Great Britain, as to any vessel equipped contrary to the first Rule, extended to the pursuit of the vessel by a naval force after she had passed beyond British jurisdiction?

2. Whether the diligence, so due, extended to an obligation, on the re-entry of any such vessel into a British port, after she had been commissioned by the Confederate States as a public ship of war, to seize and detain her in such port?

And (3), whether supplies of coal, furnished in British ports to Confederate cruisers, can be regarded as infractions of the second Rule of the Treaty, or as otherwise wrongful against the United States?

XII.—*There existed no duty to pursue ships beyond the limits of British jurisdiction.*

Upon the first of these three points, the sole argument of the United States appears to be derived from the precedent of the Terceira expedition in 1829. It is a strange proposition, and one unsupported by any principle or authority in international law, that, because a Government, which conceived its neutrality laws to have been infringed upon a particular occasion, may have thought fit to visit that offence by extraordinary measures (really in the nature of war or reprisals), beyond its own territory, therefore it placed

42. Special questions remaining to be considered.

43. As to the alleged duty of pursuit: The Terceira Expedition.