

itself under an obligation to take similar measures upon subsequent occasions, if any such should occur of a like character. In point of fact, there is no similarity between the Terceira case, which (in the view taken of it by the British Government) was an expedition of embodied, though unarmed troops, proceeding in transports from Great Britain, against an express prohibition of the British Government, for the invasion of a friendly territory,—and the departure of unarmed vessels, for the use of the Confederates, from British ports. In point of international law the British Government was not only under no obligation to pursue the Terceira expedition, but Sir Robert Phillimore (whose authority is so much extolled in the Argument of the United States,) distinctly condemns that proceeding. “The Government,” he says, “were supported by a majority in both Houses of Parliament; but in the protest of the House of Lords, and in the resolutions of (*i. e.*, moved in) the House of Commons (which condemned the proceedings of the Government), the true principles of international law are found.” (Commentaries, vol. iii, page 235.)

The two remaining points are those on which the Arbitrators have consented to receive arguments, embracing other important questions, both of international law, and as to the proper interpretation of the Rules of the Treaty of Washington, in addition to the question of the diligence (if any) due from Great Britain to the United States, in those respects.

## CHAPTER II.—ON THE SPECIAL QUESTION OF THE EFFECT OF THE COMMISSIONS OF THE CONFEDERATE SHIPS OF WAR, ON THEIR ENTRANCE INTO BRITISH PORTS.

1. The true construction of the 1st article of the Treaty.

It is contended by the United States that these ships (or at least such of them as had been illegally equipped in British territory) ought to have been seized and detained, when they came into British ports, by the British authorities. This argument depends upon a forced construction of the concluding words of the first Rule, in Article VI of the Treaty of Washington; which calls upon the neutral State to “use due diligence to *prevent the departure from its jurisdiction* of any vessel *intended* to cruize or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.” Does this Rule authorize the Arbitrators to treat it as a duty undertaken by Great Britain, to seize Confederate cruizers commissioned as public ships of war and entering British ports in that character, without notice that they would not be received on the same terms as other public ships of war of a belligerent State, if they were believed to have been “specially adapted, in whole or in part, within British jurisdiction, to warlike use?” The negative answer to this inquiry results immediately from the natural meaning of the words of the Rule itself; which plainly refer to a departure from the neutral territory of a vessel which has not at the time of such departure ceased to be *subject*, according to the law of nations, to the *neutral jurisdiction*; and the cruising and carrying on war by which still rests in *intention and purpose only*, and has not become an accomplished fact, under the public authority of any belligerent Power.

2. The privileges of public ships of war in neutral ports.

If a public ship of war of a belligerent Power should enter neutral waters in contravention of any positive regulation or prohibition of the neutral Sovereign, of which due notice had been given, she might, according to the law of nations, be treated as guilty of a hostile act, a violation of neutral territory; and hostile acts may of course be justifiably repelled by force. But the original equipment and dispatch from neutral territory of the same ship, when unarmed, whether lawful or unlawful, was no hostile act; and a foreign Power, which afterwards receives such a ship into the public establishment of its navy, and gives her a new character by a public commission, cannot be called upon to litigate with the neutral Sovereign any question of the municipal law of the neutral State, to whose jurisdiction it is in no matter subject. The neutral State may, if it think fit, give notice (though no authority can be produced for the proposition that it is under any international obligation to do so), that it will not allow the entrance of a particular description of vessels, whether commissioned or not, into its waters; if it gives no such notice it has no right, by the law of nations, to assume or exercise any jurisdiction whatever over any ship of war coming into its waters under the flag and public commission of a recognized belligerent.\* Such a ship, committing no breach of neutrality while within neutral waters, is entitled to

\* The proceedings of the British Government, in the case of the *Tuscaloosa*, turned entirely upon the question whether she was, or was not, a *prize*, whose entrance into a British port was prohibited by the Rules publicly issued by the Queen at the beginning of the war.