Mr. Cushing, when Attorney-General of the United States, in 1855, thus stated the rule, as received in the United States:—

"A foreign ship of war, or any prize of hers in command of a public officer, possesses, in the ports of the United States, the right of exterritoriality, and is not subject to the local jurisdiction."*

5. The Rule cannot require an act wrongful by international law.

It cannot, therefore, be supposed that when two nations, by both of which these principles of international law had been habitually acted on, recognized, in the first Rule of the Treaty of Washington, an obligation to "*use due diligence to prevent the departure of a ship intended to cruize*" &c., from the "*neutral jurisdiction*," either of them meant to authorize the other to demand, under any circumstances, a violation of these principles, in the case of any ship cruizing as a ship of war by the public authority of a belligerent at the time of her entrance into neutral waters, and which, according to these principles, was there entitled to the privilege of exterritoriality, and was not subject to the neutral jurisdiction. Had an innovation of so important and extraordinary a kind been intended, it would certainly have been unequivocally expressed; and it would have become the plain duty of any neutral State, which had entered into such an engagement, to give notice of it beforehand to all belligerent Powers, before it could be put in force to their prejudice. It is impossible that an act, which would be a breach of public faith and of international law towards one belligerent, could be held to constitute any part of the "*diligence due*" by a neutral to the other belligerent. The Rule says nothing of any obligation to *exclude* this class of vessels, when once commissioned as public ships of war, from entrance into neutral ports upon the ordinary footing. If they were so excluded by proper notice they would not enter; and the Rule (in that case) could never operate to prevent their departure. If they were not so excluded, instead of being "due diligence," it would be a flagrant act of treachery and wrong to take advantage of their entrance in order to effect their detention or capture. Can Her Majesty be supposed to have consented to be retrospectively judged, as wanting in due diligence, because, not having excluded these Confederate ships of war from her ports by any prohibition or notice, she did not break faith with them, and commit an outrage on every principle of justice and neutrality by their seizure? The Rules themselves had no existence at the time of the war; the Confederates knew, and could know, nothing of them; their retrospective application cannot make an act *ex post facto* "due," upon the footing of "diligence," to the one party in the war, which, if it had been actually done, would have been a wholly unjustifiable outrage against the other.

These principles receive illustration from the controversy which took place in December 1861, between Brazil and the United States, on the subject of the reception of the Sumter in Brazilian ports. Señor Taques, the Foreign Minister of Brazil, wrote thus to Mr. Webb, the United States Minister at Rio, on the 9th December, 1861:—

"Some Powers have adopted as a rule not to admit to entry in their ports either the privateers or vessels of war of belligerents; others are holden to do so under the obligations of Treaties concluded with some of the belligerents before or during the war. Brazil has never placed herself in this exceptional condition, but under the general rule which admits to the hospitality of her ports ships of war, and even to a privateer compelled by stress to seek it, provided she brings no prizes, nor makes use of her position in such ports for acts of hostility by taking them as the basis for her operations.

"The rule adopted by civilized nations is to detain in port vessels equipped for war until twenty-four hours after the departure of any hostile vessel, or let them go, requiring from the commanders of vessels of war their word of honour, and from privateers pecuniary security and promise, that they will not pursue vessels which had left port within less than twenty-four hours before them. Nor do the rules of the law of nations, nor usage, nor the jurisprudence which results from Treaties, authorize a neutral to detain longer than twenty-four hours in his ports vessels of war or privateers of belligerents, unless it could be done by the indirect means of denying them facilities for obtaining in the market the victuals and ship's provisions necessary to the continuance of their voyages. *A neutral who should act in this manner, incarcerating in his ports the vessels of one of the parties, would take from one of the belligerents the exercise of his rights, turn himself by the act into an ally and co-operator with the other belligerent, and would violate his neutrality.*

"*Without a previous declaration, before the principles adopted in Brazil and in the United States being known, such a proceeding on the part of the Brazilian authorities towards the Sumter would take the character of a snare, which would not meet the esteem or approval of any Government.*"†

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* It has been the practice of the United States to restore prizes, when brought into their ports, if made by ships illegally equipped in their territory, on proof of such illegal equipment in their Courts of Law: all the world having notice of their rule and practice in this respect. It has not been their rule or practice to seize or detain, on the ground of any such illegal equipment, ships afterwards commissioned, and coming into their ports as public ships of war of a recognized belligerent Power.

† British Appendix, vol. vi, p. 14.