The absence of any Rule obliging a neutral to *exclude* from his ports foreign ships of war, if originally adapted, wholly or in part, to warlike use within the neutral jurisdiction, rests evidently upon good reasons, and cannot have been unintentional. Whatever, as a matter of its own independent discretion and policy, a neutral Government may, at any time, think fit to do in such cases, it will certainly do with all public and proper notice; which cannot be retrospectively assumed to have been given, or agreed to be given, contrary to notorious facts. The reasons, which in some cases might make a policy of this kind just and reasonable, as against a Power which, first infringing the laws of a neutral State by procuring vessels to be illegally equipped within its territory, might afterwards employ them in war, would not apply to other cases, which may easily be supposed: *e.g.*, if such a vessel, having been disposed of to new owners after her first equipment, were afterwards commissioned by a Power not in any sense responsible for that equipment. The offence is one of persons, not of things; it does not adhere necessarily to the ship into whatever hands she may come; even a ship employed by pirates in their piracy, if she is afterwards (before seizure in the exercise of any lawful jurisdiction) actually transferred to innocent purchasers, ceases to have the taint of piracy in the hands of such new owners; as was lately decided by the Judicial Committee of the English Privy Council, in the case of the Dominican ship Telegrafo. Nor, in a question of this kind between Great Britain and the Confederate States, is it possible to assume (in view of the facts that the interpretation of the British prohibitive law was disputed and doubtful, and that international law had never treated the construction, equipment, and dispatch of unarmed ships of war by neutral shipbuilders, to the order of a belligerent, as a violation of the territory or sovereignty of the neutral State), that the authorities of the Confederate States, when they commissioned the vessels in question, were actually in the situation of a Power which had wilfully infringed British law, or British neutrality, within British territory.

6. There is no Rule obliging a neutral to exclude from his ports ships of this description.

Even if the latter part of the first Rule could be construed as the United States suggest, with respect to the subject of the present chapter, it would not apply to the Georgia,—a ship, whose special adaptation, within British jurisdiction, to warlike use, the Tribunal is asked to take for granted without any evidence, though it is denied by Great Britain, and though the ship actually proved to be unsuitable for such use. Still less could the Rule apply to the Shenandoah—a merchant ship, transferred to the Confederates, without receiving, within British jurisdiction, any new equipment or outfit whatever, of any kind, in order to enable her to cruize or to be employed in the Confederate service. It is clear, beyond controversy, that when the Shenandoah entered the port of Melbourne as a public ship of war of the Confederates, nothing had been done to her, in any part of the British dominions, which could be so much as pretended to be an infringement of the first Rule of the Treaty, or of the law of nations, or of any British law whatever. And yet, in the Argument of the United States (pages 256, 257), a statement by the United States' Consul at Melbourne, in a letter to Mr. Seward, to the effect, that, in some conversation with him, the Colonial Law Officers had "*seemed to admit*, that she was liable to seizure and condemnation, if found in British waters," is gravely brought forward, and seriously commented on, as a reason why she ought to have been seized at Melbourne.

7. In any view the latter part of Rule I cannot apply to the Georgia or the Shenandoah.

The Argument of the United States suggests, however, a distinction between "public ships of recognized nations and Sovereigns," and "public ships belonging to a belligerent Power, which is *not a recognized State*." For such a distinction, there is neither principle nor authority. The passage cited in the British Summary (page 31) from the judgment of Mr. Justice Story, in the case of the Santissima Trinidad, states the true principles, applicable to this part of the subject. The ship Independencia del Sud, whose character was there in controversy, had been commissioned by the revolutionary Government of Buenos Ayres:—

8. The distinction suggested by the United States between ships of war of recognized nations, and ships of a non-recognized State.

"There is another objection," said the learned Judge, "urged against the admission of this vessel to the privileges and immunities of a public ship, which may well be disposed of in connection with the question already considered. It is, that Buenos Ayres has not yet been acknowledged as a sovereign independent Government by the Executive or Legislature of the United States, and, therefore, is not entitled to have her ships of war recognized by our Courts as national ships. We have, in former cases had occasion to express our opinion on this point. The Government of the United States has recognized the existence of a civil war between Spain and her Colonies, and has avowed a determination to remain neutral between the parties, and to allow to each the same right of asylum and hospitality and intercourse. *Each party is, therefore, deemed by us a belligerent nation, having so far as concerns us, the sovereign rights of war*, and entitled to be respected in the exercise of those rights. We cannot interfere, to the prejudice of either belligerent, without making ourselves a party to the contest, and departing from the posture of neutrality. All captures, made by each, must be considered as having the same validity; *and all the immunities which may be claimed by public ships in our ports under the law of nations, must be considered as equally the right of each.*"