

construction at the responsibility of the neutral, as the neutral has "reasonable ground to believe" are intended for an unlawful purpose, which purpose the vessel itself does not necessarily disclose either in regard to its own character or of its intended use. But after the vessel has reached *its form* and completed its structure, why then it is a sufficient limitation of the obligation and sufficient protection against undue responsibility, that "due diligence to prevent" the assigned offence is alone required. Due diligence to accomplish the required duty is all that is demanded, and accordingly that distinction is preserved. It is made the clear and absolute duty of a nation to use due diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war against a Power with which it is at peace, such vessel *having been* specially adapted in whole or in part within such jurisdiction to warlike use. That is, when a vessel has become ready to take the seas, having its character of warlike adaptation thus determined and thus evidenced, so upon its subsequent visit to the neutral's port, as to such a vessel, the duty to arrest her departure is limited only by the—

*Chief Justice Cockburn.*—What should you think, Mr. Evarts, of such a case as this? Suppose a vessel had escaped from Great Britain with or without due diligence being observed—take the case of the Florida or the Shenandoah—take either case. She puts into a port belonging to the British Crown. You contend, if I understand your argument, that she ought to be seized. But suppose the authorities at the port into which she puts are not aware of the circumstances under which the vessel originally left the shores of Great Britain. Is there an obligation to seize that vessel?

*Mr. Evarts.*—That, like everything else, is left as matter of fact.

*The Chief Justice.*—But suppose the people at the place are perfectly unaware from whence this vessel—

*Mr. Evarts.*—I understand the question. We are not calling in judgment the authorities at this or that place. We are calling into judgment the British nation, and if the ignorance and want of knowledge in the subordinate officials at such a port can be brought to the fault of the Home Government in not advising or keeping them informed, that is exactly the condition from which the responsibility arises. It is a question of "due diligence," or not, of the *nation* in all its conduct in providing, or not providing, for the situation, and in preparing, or not preparing, its officials to act upon suitable knowledge.

We find nothing of any limitation of this second clause of the first Rule that prevents our considering its proper application to the case of a vessel, which, for the purpose of the present argument, it must be conceded ought to be arrested under it, and detained in port if the "commission" does not interpose an obstacle.

We have laid down at pages from 331 to 333 in our Argument, what we consider the rules of law in regard to the effect of the "commission" of a sovereign nation, or of a belligerent not recognized as a Sovereign, in the circumstances involved in this inquiry. They are very simple. I find nothing in the Argument of my learned friend, careful and intelligent as it is, that disturbs these rules as rules of law. The public ship of a nation, received into the waters or ports of another nation, is, by the practice of nations, as a concession to the Sovereign's dignity, exempt from the jurisdiction of the Courts and all judicial process of the nation whose waters it visits. This is a concession mutual, reciprocal, between nations having this kind of intercourse, and resting upon the best and surest principles of international comity. But there is no concession of extra-territoriality to the effect or extent that the *Sovereign* visited is *predominated* over by the Sovereign receiving hospitality to its public vessels. The principle simply is, that the treatment of the vessel rests upon considerations between the nations as sovereign, and in their political capacities, as matter to be dealt with directly between them, under reciprocal responsibility for offence on either side, and under the duty of preserving relations of peace and good will if you please, but, nevertheless, to be controlled by reasons of State.

Any construction of the Rule that would allow the visiting vessel to impose its own sovereignty upon the Sovereign visited, would be to push the rule to an extreme that would defeat its purpose. It is the equality of Sovereigns that requires that the process and the jurisdiction of Courts should not be extended to public vessels.

But all other qualifications as to how the Sovereign visited shall deal with public vessels, rest in the discretion of the Sovereign. If offence is committed by such vessels, or any duty arises in respect to them, he, at his discretion and under international responsibility, makes it the subject of remonstrance, makes it the subject of resentment, makes it the subject of reprisal, or makes it the subject of an immediate exercise of force, if the circumstances seem to exact it.

What, then, is the tenor of the authorities, in respect to a public vessel not of a Sovereign, but of a belligerent who has not been recognized as a Sovereign? The Courts of