

nations as such, that ought to have been intercepted by the exercise of prerogative, or by the power of the Crown at common law, whichever you choose to call it. The object of all the discussion of the learned Counsel is continually to bring it back to the point that within the kingdom of Great Britain, the Foreign Enlistment Act was the sole authority for action and prevention, and if these vessels were reasonably proceeded against, under the requirements of administrative duty in enforcing the Foreign Enlistment Act, as against persons and property for confiscation or for punishment, that was all that was necessary or proper.

*Sir Alexander Cockburn.*—Am I to understand you as a lawyer to say that it was competent for the authorities at the port whence such a vessel escaped to order out troops and command them to fire?

*Mr. Evarts.*—That will depend upon the question whether that was the only way to compel her to an observance.

*Sir Alexander Cockburn.*—I put the question to you in the concrete.

*Mr. Evarts.*—That would draw me to another subject, viz., a discussion of the facts. But I will say that it depends upon whether the act she is engaged in committing comes within the category of *hostile acts*.

*Sir Alexander Cockburn.*—But taking this case, and laying aside the question of due diligence. The vessel is going out of the Mersey. Do you say as a lawyer that she should be fired upon?

*Mr. Evarts.*—Under proper circumstances, yes.

*Sir Alexander Cockburn.*—But I put the circumstances.

*Mr. Evarts.*—You must give me the attending circumstances that show such an act of force is necessary to secure the execution of the public authority. You do not put in the element that that is the only way to bring such a vessel to. If you add that element, then I say yes.

*Sir Alexander Cockburn.*—She is going out of the port. They know she is trying to escape from the port. Do you, I again ask, do you as a lawyer say that it would be competent for the authorities without a warrant, simply because this is a violation of the law, to fire on that vessel?

*Mr. Evarts.*—Certainly, after the usual preliminaries of hailing her and firing across her bows, to bring her to. Finally, if she insists on proceeding on her way, and thus raises the issue of escape from the Government or forcible arrest by the Government, you are to fire into her. It becomes a question whether the Government is to surrender to the ship, or the ship to the Government. Of course, the *lawfulness* of this action depends upon the question whether the act committed is, under the law of nations, *a violation of the neutrality of the territory and a hostile act*, as it is conceded throughout this Argument the evasion of an *armed ship* would be.

In section 16 of this Argument you will find the statement of the learned Counsel on this subject of the executive powers of the British Government on this behalf:—

“It is impossible too pointedly to deny the truth of this assumption or too pointedly to state that, if any military or naval expeditions, or any other acts or operations of war against the United States, in the true and proper sense of these words, had been attempted within British territory, it would not have been necessary for the British Government, either to suspend the Habeas Corpus Act, or to rely on the Foreign Enlistment Act in order to enable it to intercept and prevent by force such expeditions or such acts or operations of war. The whole civil police and the whole naval and military forces of the British Crown would have been lawfully available to the Executive Government, *by the common law of the realm*, for the prevention of such proceedings.”

This is the law of England as understood by the eminent Counsel who has presented this Argument. Given the facts that make the evasion from the port of Liverpool of the vessel proposed, a violation of the law of nations,—because it is a hostile act against the United States, and exposes Great Britain to responsibility for the violation of neutrality,—then the situation has arisen, in the failure of civil means, the failure of remonstrance, of arrest and of bringing to, for firing into the vessel. For certainly, if we have authority to stop, we are not to have that authority met and frustrated by the persistence of violent resistance to it.

It certainly makes very little difference to us whether this authority of the executive to use all its forces for the actual prevention of the occurrence of these hostile transactions within the realm, is lodged in what he calls the common law of Great Britain, or is found, as we suppose, in the prerogative of the Crown. Nor do I understand this Argument, throughout, to quarrel with the proposition that an *armed ship* that should undertake to proceed out of the port of Liverpool would be exposed to the exercise of that power; and, of course, if the proper circumstances arose, even to the extent to which it has been pushed in answer