not be had, except upon the ordinary process, the ordinary motives, the ordinary evidence, and the ordinary duty by which confiscation of private property was obtained, and that provision was not adequate to our rights, then our argument is that your law needed improvement.

But it is said that nothing in the conduct of Great Britain, of practical importance to the United States, turned upon the question whether the British law, the Foreign Enlistment Act, was applicable only to an *armed* vessel, or was applicable to a vessel that should go out merely prepared to take its armament. How is it that nothing turned upon that question? It is so said because, as the learned Counsel contends, the Government adopted the construction that the statute did embrace the case of a vessel unarmed. But take the case of the Alabama or the Florida for an illustration, and see how this pretension is justified by the facts. What occasioned the debates of administrative officers? What raised the difficulties and doubts of Custom-house and other officials, except that the vessel was *not* armed, when as regards both of these vessels the Executive Government had given orders that they should be watched? Watched! Watched, indeed! as they were until they went out. They were put under the eye of a watching supervision, to have it known whether an armament went on board, in order that *then* they might be reported, and, it may be, intercepted. The whole administrative question of the practical application of authority by the British Government, in our aid, for the *interception* of these vessels, turned upon the circumstance of whether the vessel was armed or was not armed. Under the administration of that question they went out without armaments, not wishing to be stopped, and by pre-arrangement, took their armaments from tenders that subsequently brought them, which, also, could not be stopped.

Certain observations of Baron Bramwell are quoted by the learned Counsel in this connection, which are useful to us as illustrating the turning-point in the question as to armed and unarmed vessels. They are to this effect, and exhibit the British doctrine:—

A vessel fitted to receive her armament *and* armed, is a vessel that should be stopped under an international duty. This amounts to an act of proximate hostility, which a neutral is bound to arrest. Baron Bramwell held that the emission of a vessel *armed* is, undoubtedly, a hostile expedition within the meaning of the law of nations. But a vessel fitted to receive her armament in the neutral port, and sent out of that port by the belligerent only in that condition, he held, is not an enterprise in violation of the law of nations, and is not a hostile expedition in the sense of that law. By consequence, Baron Bramwell argued, nothing in such an enterprise of a belligerent from a neutral port calls for the exercise of authority on the part of the neutral, either by law or by executive interference, and, until the armament gets on board, there is nothing to bring the case within the province of *international* proscription and of *international* responsibility. It was then, he argues, only a question for Great Britain whether the provisions of the Foreign Enlistment Act can touch such a vessel, and the only question for the British Government was, as towards the United States, have they done their duty to themselves in the enforcement of the municipal law, which involves a question of international responsibility to the United States? We insist, therefore, that so far from nothing practical turning upon this distinction, all the doubts and difficulties turn upon it, especially in connection with the ancillary proposition that these vessels could be provided, by means of their tenders, with armaments, without any accountability for the complete hostile expedition.*

It is said that we can draw no argument as to the deficiency of their old Act, from the improved provisions of the new Act of 1870. Why not? When we say that your Act of 1819 was not adequate to the situation, and that, if you had no prerogative to supply its defects, you should have supplied them by Act of Parliament—that you should have furnished by legislation the means for the performance of a duty which required you to prevent the commission of the acts which we complain of—it is certainly competent for us to resort to the fact that, when our war was over, from *thenceforth*, movements were made towards the amendment of your law, and that, when the late war on the continent of Europe opened, your new Act was immediately passed, containing all the present provisions of practical executive interception of such illegal enterprises—it is, I say, competent for us to refer to all this as a strong, as well as fair argument, to show that, even in

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* Mr. Theodore Ortolan, in a late edition of his "Diplomatie de la Mer," tome ii, says:—

"Nous nous rattacherons, pour résoudre en droit des gens les difficultés que présente cette nouvelle situation, à un principe universellement établi, qui se formule en ce peu de mots: 'Inviolabilité du territoire neutre.' Cette inviolabilité est un droit pour l'état neutre, dont le territoire ne doit pas être atteint par les faits de guerre, mais elle impose aussi à ce même état neutre une étroite obligation, celle de ne pas permettre, celle d'empêcher, activement au besoin, l'emploi de ce territoire par l'une des parties ou au profit de l'une des parties belligérantes, dans un but hostile à l'autre partie."—Case of the United States, p. 182.