In conclusion of the first chapter of this special Argument, the eminent Counsel, at section 43, takes up the "*Terceira affair*" and insists, that if Great Britain, in a particular situation for the exercise of duties of neutrality, took extraordinary measures, it does not prove that the Government were under obligation to take the same measures in every similar or comparable situation.

We referred to the Terceira affair for the purpose of showing that the Crown, by its prerogative *possessed* authority for the interception of enterprises originating within the kingdom for the violation of neutrality. The question whether the Executive will use it is at *its* discretion. The *power* we prove, and, in the discussions in both Houses of Parliament, it was not denied, in any quarter, that the power existed to the extent that *we call for its exercise within British jurisdiction.* The question in controversy then was (although a great majority of both Houses voted *against* the resolutions condemning the action of the Government) whether, in the waters of Portugal or upon the seas, the Government could, with strong hand, seize or punish vessels which had violated the neutrality of Great Britain by a hostile, though unarmed, expedition from its ports. The resolutions in both Houses of Parliament received the support of only a small minority. *Mr. Phillimore,* however, says the learned Counsel, expresses his opinion, in his valuable work, that the minority were right.

Sir Alexander Cockburn.—I confess I always thought so myself.

Mr. Evarts.—But the point now and here in discussion is, what were the powers of the Crown *within* the limits of British jurisdiction, and it is not necessary to consider who were right or who were wrong in the divisions in Parliament. What all agreed in was, that the fault charged upon the Government was the invasion of the territorial rights of another nation.

But we cited the Terceira affair for the additional purpose of showing the actual *exercise* of the power in question by the Crown in that case. This was important to us in our Argument; it justly gave support to the imputation that the powers of the Government were *not* diligently exercised during the American rebellion in our behalf. Where there is a will there is a way; and diligence means the use of all the faculties necessary and suitable to the accomplishment of the proposed end.

Now, in conclusion, it must be apparent that the great interest, both in regard to the important controversy between the High Contracting Parties, and in regard to the principles of the law of nations to be here established, turns upon your award. That award is to settle two great questions: whether the acts which form the subject of the accusation and the defence are shown to be acts that are proscribed by the law of nations, as expressed in the three Rules of the Treaty. You cannot alter the nature of the case between the two nations as shown by the proofs. The facts being indisputably established in the proofs, you are then to pass upon the question whether the outfit of these tenders, to carry forward the armament of the hostile expedition to be joined to it outside of Great Britain, is according to the law of nations, or not.

When you pass upon the question whether this is a violation of the second Rule, you pass upon the question, under the law of nations, whether an obligation of a neutral not to allow a hostile expedition to go forth from its ports, can be evaded by having it sent forth in parcels, and having the combination made outside its waters. You cannot so decide in this case, and between these parties, without establishing by your award, as a general proposition, that the law of nations proscribing such hostile expeditions may be wholly evaded, wholly set at naught, by this equivocation and fraud practised upon it; that this can be done, not by surprise,—for anything can be done by surprise,—but that it can be done *openly and of right.* These methods of combination outside of the neutral territory may be resorted to for the violation of the obligations of neutrality, and yet the neutral nation, knowingly suffering and permitting it, is free from responsibility. This certainly is a great question.

If, as we must anticipate, you decide that these things are proscribed by the law of nations, the next question is, was "due diligence" used by Great Britain to prevent them.

The measure of diligence actually used by Great Britain, the ill consequences to the United States from a failure on the part of Great Britain to use a greater and better measure of diligence, are evident to all the world. Your judgment, then, upon the second question is to pronounce whether that measure of diligence which was used and is known to have been used, and which produced no other result than the maintenance, for four years, of a maritime war, upon no other base than that furnished from the ports and waters of a neutral territory, *is* the measure of "due diligence," to prevent such use of neutral territory, which is required by the three Rules of the Treaty of Washington for the exculpation of Great Britain.