

builders and to the pretended owners, no doubt accompanied by corresponding orders addressed to the Customs officials.

The Counsel of Great Britain loudly and positively affirms that the means adopted on the responsibility of the Government, that is to say, by the spontaneous action of the Ministers entrusted with the executive power of the Crown, were perfectly legal and constitutional. We, the Counsel of the United States, are happy to be, on this point, of the same opinion as the Counsel of Great Britain.

But in that case due diligence was not exercised with regard to the Florida and the Alabama. The consequence is inevitable.

In the extract from Sir Roundell Palmer's speech on the subject of the *Alexandra*, I find an expression which strikes me. He says: "You cannot stop the ship by going before a magistrate; it must be done upon the responsibility of the Government."

How? It *must* be done upon the responsibility of the Government. Then the Customs officers were laughing at Mr. Dudley, or else they wilfully deceived him, when they recommended him to begin legal proceedings on his own (Dudley's) responsibility. Then, moreover, when Lord Russell asked Mr. Adams for evidence, the latter was entirely right in replying that he had neither the power, nor the means, of instituting legal proceedings in England. Then, too, the Government totally failed in its duty of due diligence with regard to the Florida and Alabama.

#### *Of the powers of the Crown in England.*

The Counsel of Great Britain endeavours to reply to the arguments of the United States with regard to the powers of the Crown, by raising loud cries of arbitrary power, and violation of the laws and constitution of England.

Let us understand one another. Either England possesses the means of preventing, within her territorial jurisdiction, the belligerent enterprises of unauthorized individuals; or else she does not possess them. There is no escape from this dilemma.

If she possesses those means and does not exercise them, she is wanting in the due diligence of the Treaty.

If she does not possess them, in consequence of the impediments she has allowed her jurists to impose on her, and if she has gone so far as to abdicate all real national sovereignty, she is still wanting in the due diligence of the Treaty.

As is well said by Vattel: "If a sovereign who could retain his subjects in the rules of justice and peace, suffers them to ill-treat a nation, either in its body or members, he does no less harm to the whole nation than if he ill-treated it himself."

As Phillimore says: "Each State has a right to expect from another the observance of international obligations, without regard to what may be the municipal means which it possesses for enforcing this observance."

As says Dana, on the subject of the law of the United States:—

"Our obligation arises from the law of nations, and not from our own statutes, and is measured by the law of nations. Our statutes are only means for enabling us to perform our international duty, and not the affirmative limits of that duty. We are as much responsible for insufficient machinery, when there is knowledge and opportunity for remedying it, as for any other form of neglect. Indeed, a nation may be said to be more responsible for a neglect or refusal which is an imperial, continuous act, and general in its operation, than for neglect in a special case, which may be a fault of subordinates."

Such is the recognized law of nations. The Counsel of Great Britain admits it. Then what is the use of a dissertation on arbitrary power?

The Counsel appears to assert that what is done by any Government beyond the provisions of a *written law* is arbitrary.

I understand this notion when speaking of a *really* constitutional Government, like Italy, Brazil, Switzerland, or the United States. In those countries the executive functionaries, King, Emperor, President, no matter what the title, and the legislative functionaries, have each their duties and their powers traced beforehand by a written national compact. There, when the *Government*, that is to say, the totality of the national powers, acts, it acts in conformity with the compact, with the Constitution, and by means of the functionaries specially designated according to the Constitution. But where is one to find the Constitution of England? No one is ignorant that what in England is called "the Constitution" is but the combination of the legislative acts, of the recognized customs, usages, and traditions, and of the public opinion of the Kingdom. For the executive administration there is the Crown, represented by its responsible Ministers, who, in these latter times, have arrogated to themselves the title of "Government;" there is the Parliament, which makes laws and controls the Ministers,