The Laws of the United States.

The Counsel of Great Britain devotes much space to the discussion of the laws of the United States. I shall, I think, require less time to reply to his Argument.

The Counsel endeavours to prove that the law of the United States, in so far as it relates to this question, is limited to the case of an armed vessel.

With this object, he quotes expressions from the third Section of the law, which enacts certain penalties against "any person who shall, within the limits of the United States, fit out and *arm*, or attempt to fit out and *arm*, or shall knowingly be concerned in the *furnishing*, *fitting out*, or arming of any ship or vessel," with intent that such ship or vessel should be employed in the service of a belligerent foreign Power.

Arguing from these expressions in the law, he believes that to constitute an offence the vessel must have been armed, or an attempt must have been made to arm her.

But, as a question of jurisprudence, this interpretation of the law is entirely erroneous. It is established in the United States that it is not the nature of the preparations which constitutes the offence, but the intention which dictates the acts. The doctrine is thus stated by Dana:—

"As to the preparing of vessels within our jurisdiction for subsequent hostile operations, the test we have applied has not been the extent and character of the preparations, but the intent with which the particular acts are done. If any person does any act, or attempts to do any act, towards such preparation, with the intent that the vessel shall be employed in hostile operations, he is guilty, without reference to the completion of the preparations, or the extent to which they may have gone, and although his attempt may have resulted in no definite progress towards the completion of the preparations. The procuring of materials to be used, knowingly, and with the intent, &c., is an offence. Accordingly, it is not necessary to show that the vessel was armed, or was in any way, or at any time, before or after the act charged, in a condition to commit acts of hostility.

"No cases have arisen as to the combination of materials which, separated, cannot do acts of hostility, but united, constitute a hostile instrumentality; for the intent covers all cases, and furnishes the test. It must be immaterial where the combination is to take place, whether here or elsewhere, if the acts done in our territory—whether acts of building, fitting, arming, or of procuring materials for these acts—be done as part of a plan by which a vessel is to be sent out with intent that she shall be employed to cruise." (Argument of the United States, pp. 363, 364.)

These extracts from Dana are authoritative on the question. The true interpretation of the law has been laid down in a decision of the Supreme Court of the United States. The Court determined "that it is not necessary that the vessel should be armed, or in a condition to commit hostilities, on leaving the United States." (United States *v.* Quincy, Peters' Reports, vol. vi, p. 445; *vide* Opinions, vol. iii, pp. 738, 741.)

Such is the law as understood and practised in America. Two of the Counsel of the United States, Mr. Evarts and myself, have administered the Department of Justice, and we have so personal a knowledge of that law that we also can speak authoritatively on the subject. I affirm that the interpretation of this law propounded by the British Counsel is absolutely contrary to the interpretation recognized in the United States.

I beg to call attention to the expressions of the temporary Act of 1838, reported by myself to the Congress of the United States. That Act allows the seizure "of any vessel or *vehicle*," armed or unarmed, when there are any circumstances which give probable cause to believe that such "vessel or vehicle" is intended for military operations against a foreign State. (United States' Statutes, vol. v, p. 213.)

This Act had been drawn up according to the received interpretation of the permanent Act.

It follows that the whole structure of criticism, which is built up by the Counsel on the subject of the preventive powers of the President of the United States, falls to the ground. He supposes that that power is limited to the case of an armed vessel, because he supposes that the penal clauses have only that extent. He is mistaken on both points. The preventive powers of the President apply to all cases within the Act, to "all the prohibitions and penalties of the Act." Now the Act does not require that the vessel should be armed; it is sufficient that its owner should have an intention of employing it in acts of hostility against a Power friendly to the United States.

The case of Gelston *v.* Hoyt, cited by the British Counsel, relates only to the manner of exercising the preventive powers of the law, and in no way affects the powers themselves.

In the documents annexed to the Counter-Case of the United States will be found numerous examples of the exercise of this preventive power by the President. The fact of being armed or not is only a circumstance which bears with more or less weight on the real question—that of the intentions of the owner of the vessel.