

"Il ne faut d'ailleurs pas perdre de vue que tous ces effets désastreux sont en premier lieu imputables, non pas au Gouvernement Anglais, mais aux croiseurs eux-mêmes. Personne n'accusera le Gouvernement Anglais d'avoir donné mission de détruire les navires de commerce Américains ou d'avoir, par ses agissements, entravé ou endommagé la marine Américaine. Ce que l'on peut lui reprocher à bon droit, en supposant que les faits cités plus haut doivent être considérés comme avoués ou prouvés, ce n'est pas un *fait*, mais une *omission contre le droit*. Sa faute ne consiste pas à avoir équipé et appareillé les corsaires, mais à *n'avoir pas empêché* leur armement et leur sortie de son territoire neutre. Mais cette *faute* n'a qu'un rapport *indirect*, et nullement un rapport *direct* avec les déprédations réellement commises par les corsaires."\*

In the case of a breach of blockade the offence is deemed by international law to be "deposited," and the offence of the neutral vessel to be terminated when she has once completed her return voyage. "The penalty," says Chancellor Kent, "never travels on with the vessel further than to the end of the return voyage; and, if she is taken in any part of that voyage, she is taken *in delicto*." (Commentaries; vol. i, page 151.) As to contraband, the law is thus stated in Wheaton's "Elements" (Lawrence's Edition, page 809).

"The general rule as to contraband articles, as laid down by Sir W. Scott, is, that the articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy's port. Under the present understanding of the law of nations, you cannot generally take the proceeds in the return voyage. From the moment of quitting port on a hostile destination, indeed, the offence is complete, and it is not necessary to wait till the goods are actually endeavouring to enter the enemy's port; but beyond that, if the goods are not taken *in delicto*, and in the actual prosecution of such a voyage, the penalty is not now generally held to attach."

Mr. Wheaton adds, by way of qualification, that "the same learned judge applied a different rule in other cases of contraband, carried from Europe to the East Indies, with false papers and false destination, intended to conceal the real object of the expedition, where the return cargo, the proceeds of the outward cargo taken on the return voyage, was held liable to condemnation." These were the cases of the *Rosalie* and *Betty* and the *Nancy*; as to which, in a note, the learned author says:—

"The soundness of these last decisions may be well questioned; for, in order to sustain the penalty, there must be, on principle, a *delictum* at the moment of seizure. To subject the property to confiscation whilst the offence no longer continues, would be to extend it indefinitely, not only to the return voyage, but to all future cargoes of the vessel, which would thus never be purified from the contagion communicated by the contraband articles."

If the analogy of these cases is followed (and what nearer analogy can be suggested?), Great Britain cannot be held responsible for the cruises of the *Florida* after her departure from *Mobile* in January 1864.

The case of the *Gran Para* (reported in the 7th volume of Mr. Wheaton's *Decisions* in the Supreme Court of the United States, page 471)† is certainly not an authority for any contrary principle or conclusion. The question there was, not whether any authority of the United States should seize or detain the ship *Irresistible* (then in the war service of General Artigas, as Chief of the so-called "Oriental Republic"), which was held to have been illegally fitted out in a port of the United States, in violation of the neutrality law of that country,—much less, whether the United States ought to be held responsible for any of her captures upon the high seas,—but solely, whether the cruise, on which she had taken a prize (the *Gran Para*), which was actually brought into a port of the United States, was so disconnected from her original illegal outfit, by the fact of her having been at *Buenos Ayres* during the interval, as to make it proper for the Courts of the United States to refuse to exercise jurisdiction for the purpose of restoring that prize to her original Portuguese owner? Upon the whole circumstances of the case, this question was determined in the negative. The material facts being that the *Irresistible* was built at *Baltimore*, in all respects for purposes of war; that she there enlisted a crew of about fifty men, and took in a sufficient armament for the purpose of the cruise in which she was afterwards engaged; that she went to *Buenos Ayres*, staid there only a few weeks, went through the form of discharging, but immediately afterwards re-enlisted, substantially, the same crew; obtained no new outfit or armament; took a commission from the Government of *Buenos Ayres* to cruise against Spain, but sent back that commission on the very next day after leaving the port, when the officer in command produced a wholly different commission from General Artigas, as Chief of the "Oriental Republic," under which he

\* The italics in this quotation are in the original text of M. Bluntschli.

† See, also, *British Appendix*, vol. iii, p. 91.