

Reply of the Counsel of the United States to the Argument of Her Britannic Majesty's Counsel on the Special Question of the Legal Effect, if any, of the Entry of the Florida into the Port of Mobile, after leaving the Bahamas, and before making any Captures.

The Florida, after her illegal outfit as a ship of war in the neutral territory of Great Britain, and the completion of her armament, warlike munitions and crew from the same neutral territory, took the seas under a Confederate commission, and after an unsuccessful attempt to add to her complement of men by violating the neutrality of Spain, slipped into Mobile by a fraudulent imposition upon the blockading vessels, which her British origin enabled her to practise. She was there imprisoned four months before she was able to elude the vigilance of the blockaders, and she obtain there, it is said, some addition to the force of the crew which she had when she entered that port. Her captures were made *after* she left Mobile, and a question of public law is now raised upon this state of facts, to this effect: "Is the responsibility of Great Britain to the United States for the depredations of the Florida relieved by this visit of that cruiser to a Confederate port under the circumstances in evidence?" The question assumes that, but for this visit, the neutral responsibility for the acts of this cruiser would exist, and seeks to arrive at the significance, if any, of this visit in relieving the neutral from such responsibility. The Counsel of Her Britannic Majesty has discussed this question, and we now offer a brief reply to his Argument.

I.

It is said that a limitation upon a neutral's responsibility for the acts of a cruiser, for which the neutral would otherwise continue to be responsible, may be found in the *principle* of the rule by which neutral trade in contraband of war and belligerent right to prevent it are regulated. This rule is understood to be, that the belligerent right to intercept or punish trade in contraband, carried on by a neutral, must be exercised *during the guilty voyage*, and that *its* termination ends the belligerent's redress and the neutral's exposure. The view which we take of this suggestion makes it unnecessary to consider whether the more strict or the more liberal measure of the duration of the guilty voyage is the proper one.

It seems to us that it needs but little attention to the nature of this struggle between neutral *right* to trade and belligerent *right* to restrict and defeat that trade, and to the solution of these conflicting and competing rights which the law of nations has furnished, to reject the analogy as valueless in the present discussion.

Neutral nations properly insist that their trade is not to be surrendered because of the war between the two belligerents. But they concede that the belligerent Powers, as against each other, may rightfully aim at the restriction or destruction of each other's commerce. How far the belligerent may press against his enemy's commerce, which, in turn, is also the neutral's commerce, and how much the neutral must acquiesce in *its* commerce being dealt with in its character of being also the enemy's commerce, is the problem to be solved in the interest of preserving peace with the neutrals, and restricting the war to the original belligerents.

The solution arrived at, and firmly and wisely established, covers the three grounds of (1), neutral trade with ports of the enemy under actual blockade; (2), visitation and