with William Chase, and had equal knowledge with him of the whole transaction.

The foregoing views dispose of this case, and it is unnecessary to refer in detail to the charge of the Circuit Court, because it was in conformity to them.

The instructions asked by the insurance company were properly refused. A portion of them were right in the abstract, but would have misled the jury, there being no evidence in the case applicable to them. The rest were inconsistent with the law of the case as given in this opinion.

The judgment of the Circuit Court is

AFFIRMED WITH COSTS.

Mr. Justice MILLER dissented.

THE SIR WILLIAM PEEL.

1. Regularly, in cases of prize, no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons found on board.
2. If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof.
3. If, preparatory to the first hearing, testimony was taken of persons not in any way connected with the ship, such evidence is properly excluded, and the hearing takes place on the proper proofs.
4. If a ship or cargo is enemy property, or either is otherwise liable to condemnation, the circumstance that the vessel at the time of capture was in neutral waters, would not, by itself, avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territories had suffered trespass, for apology or indemnity. But neither an enemy, nor a neutral acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.
5. Where several witnesses stated facts which tended to prove that a vessel was in the employment of an enemy government; and that part, at least, of her return cargo was in fact enemy property; while the statements of others made it probable that the vessel was in truth what she professed to be, a merchant steamer, belonging to neutrals, and nothing

more; that her outward cargo was consigned in good faith by neutral owners for lawful sale; that the return cargo was purchased by neutrals, and on neutral account, with the proceeds of the cargo or other money; the court directed restitution, without costs or expenses to either party as against the other.

APPEAL from the decree of the District Court for the Eastern District of Louisiana, respecting the steamship Sir William Peel and cargo, which had been captured September 11, 1863, at the mouth of the Rio Grande, on the Mexican side, as it seemed, thereof, by the United States war vessel Seminole, during the late rebellion, and libelled in the said court for prize of war.

A claim to the vessel was put in by Corry & Laycock, of Manchester, England; and for the cargo, by Henry & Co., of the same place.

On the examination *in preparatorio*, the only persons on board the ship who were examined were the master, mate, and one seaman. From these, the charter-party on board, and a survey of the vessel, it appeared that the vessel had been sold 24th April, 1863, by certain persons, British subjects, who had bought her a week before, to Corry & Laycock; that the vessel (one of 1500 tons burden) had been built in 1855 as a war vessel for the Portuguese government, and at the time of the sale had been employed in the British transport service; that her marine engines were six feet below the water line; that three days after the sale, *i. e.*, on the 27th April, the new purchasers chartered her to Duranty & Co., "for the conveyance of lawful merchandise between Liverpool and Mexico and any other lawful ports; *the vessel not to attempt to break any blockade. No injurious cargoes to be shipped* as ordered by the charterers;" that Henry & Co. had shipped upon her a general cargo; gambier, sumac, boots in cases, bar, wrought, and hoop iron, baled goods, and a number of axes; that the vessel began to unlade and relade at the same time. When captured she had on board her a keg (25 lbs.) and a flask of gunpowder, 72 cannon cartridges, 48 rifle cartridges, 24 blue lights, 16 rockets, 47 muskets ready for action, 4 boarding pistols, 11 toma-

hawks for boarding, 46 boarding cutlasses, and several other military accoutrements placed in the companion-way or in a room amidships; also among the dunnage, partly hidden, a lot of solid round shot, and a quantity of grape-shot loose, and between decks two casks of iron rings used for artillery harness. These articles, it was testified by one or more of the persons above mentioned, had been on the ship when in the transport service, and had followed her as she passed to the new owners. The captain testified that there was "no other warlike material aboard; that when the vessel was loaded at Liverpool everything like contraband had been excluded; and that Corry & Laycock owned the ship, and Henry & Co. the cargo; that all the owners were Englishmen, and had always lived at home; that the voyage was from Liverpool to Matamoras and back; that the outward cargo was to be delivered to Milmo & Co., a firm of Matamoras, for the benefit of Henry & Co."

It appeared also, from the testimonies just mentioned, that the vessel cleared from Liverpool direct to Matamoras, but had stopped, as the mate testified (the captain saying nothing about this), at Jamaica to take in coal; and that she arrived at the mouth of the Rio Grande, the dividing river between Mexico and the United States, June 24, 1863, and anchored well on the Mexican side; that she began to unlade her outward cargo and to take a return cargo of cotton at the same time; the outward cargo being discharged in lighters and taken by steam from thence to Matamoras, about thirty miles from the mouth of the river; the return cargo of cotton being brought down in lighters and so put on the Sir William Peel; and that, about 950 bales being on board, the vessel was captured. That the ship's papers had been given to her consignees at Matamoras, and were therefore not on board, the vessel not being yet fully laden or ready to return.

In addition to this testimony of the captain, mate, and seaman, the testimony of two other persons, loyal citizens of the United States, one resident in Brownsville, a place in the State of Texas, and then in possession of the Confederacy;

the other a mate of a merchant vessel of New York, then at anchor near the Peel, was taken, *in preparatorio*, along with that of the witnesses from the ship. The testimony of these witnesses went to prove that the rebel authorities or rebel citizens were interested in the vessel and the cargo both outward and return.*

On the case coming to hearing, the court, on motion of counsel of the captors, excluded the testimony of such of the witnesses as were not found on board the captured vessel, but subsequently gave leave to both parties to take further proofs. Further testimony, including that of one of the persons whose evidence had been excluded, as taken *in preparatorio*, was accordingly taken on both sides. It was contradictory.

On the one hand it was testified that the consignees, Milmo & Co., of Matamoras, had the general reputation of being agents of the Rebel Confederacy, that they had a branch house in Brownsville, nearly opposite, in Texas, and were engaged in receiving cargoes from Europe which they disposed of to the military authorities of the Confederacy, receiving and lading, in return, cotton which the Confederacy had seized, and over which it exercised the right of property.

One witness of the captors said:

"I crossed over (from Texas to Mexico) between five and six hundred bales, Confederate cotton, that was to go on to the Sir W. Peel, but I cannot swear that it went on board her." . . "This cotton had been turned over by a Confederate States agent to Milmo & Co., for account of the Confederate government. . . . Milmo & Co. hurried me up, as they were anxious to ship it on the Sir W. Peel." "I shipped the cotton even during nights and on Sundays." "I was fully confident at the time that this cotton was shipped for the Peel, and had no doubt of it whatever."

Another witness of the captors, resident for many years in Brownsville and its vicinity, testified:

* For the suspicious character of all the trade between neutrals and Matamoras, see the statement of the case in The Peterhoff, *supra*, p. 30, and the chart, *supra*, p. 173.

Statement of the case.

"It was generally known in Matamoras that the Peel was at the mouth of the Rio Grande. This public notoriety was as to her size; second, as to the cargo she had; and third, as to the disposition to be made of that vessel after leaving the port of Matamoras. Her size was unusual for a vessel in those waters; her cargo, comprising arms and munitions of war. It was the general rumor that she was to receive her cargo of cotton, go to Havana and Nassau, and there discharge her cargo, and then become a privateer. I very often met with Texan and rebel officers. I remember two with whom I had conversations with regard to the Peel. The adjutant, Dr. Riley, at the time of the seizure of cotton by the Confederacy, told me, when I inquired of him the cause of this impressment of cotton, that certain vessels had arrived from England belonging to parties with whom he had contracts, and they found it necessary to impress cotton if they were to receive these cargoes; accordingly the cotton was impressed, in order that they could receive these cargoes.

"The Sir William Peel was spoken of in connection with these cargoes in a conversation with J. K. Spear, quartermaster's clerk in Brownsville, in reference to the amount of arms the people of Western Texas had. He stated that they received all the arms they desired from vessels at the mouth of the Rio Grande, and that for a week previous he had been engaged in crossing arms for the quartermaster. I inquired of him where he had the arms from, whether from the Mexican shore or direct from the Gulf. He answered he got them in both ways, direct from vessels and from the other side, the Mexican shore. At the same time he stated that a particular friend of his was interested in the Sir William Peel, and that he had been receiving goods from the Sir William Peel."

On the other hand, the testimony of one of the partners of the firm of Milmo & Co. was as follows:

"The vessel belonged and still belongs to Messrs. Corry & Laycock, merchants, living in Manchester, England, and British subjects.

"The cargo on board the vessel when captured, was and is the *bonâ fide* property of Henry & Co., residing in Manchester, British subjects, purchased by us in this port for them; the cargo landed here belonged to the same parties. I derive this knowl-

edge from the consignment, and *correspondence* relative to the consignment of the said cargo to us, by the said Henry & Co. Their ownership was absolute and exclusive of all other interest.

"We had full instructions to invest the entire proceeds of the inward cargo in cotton, and to fill up the Sir William Peel for Liverpool. If the proceeds did not furnish cotton enough, then to take any freight offering for that port, sufficient to load the vessel at the ruling rate of freight. We accordingly had ready for the Sir William Peel, three thousand bales of cotton, the quantity thought to be necessary to fill her. Our instructions also directed us to give her as quick despatch as possible for Liverpool; and her cargo was engaged for, and the nine hundred and four bales on board were destined for that port."

The instructions referred to by this witness were not produced.

The further proofs showed that there was machinery aboard, apparently not on the manifest, which had been landed; bales of blankets, &c., &c., and also tended to show that the vessel when first anchored, was in American water; but that she had shifted her position to the spot at which she was captured.

The testimony as a whole, satisfied the mind of the court below that the vessel was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters. On that ground, it decreed her restitution; but entertaining grave doubts as to the object of her voyage, "so grave, indeed, that but for this consideration that she was captured in neutral waters, the court should have decreed her condemnation, it ordered that the costs and charges consequent upon the capture, be paid by the claimants, and that damages be refused." Both parties appealed.

Messrs. Evarts and Marvin, with whom was Mr. A. F. Smith, for the claimants:

I. The order made in the court below, granting to the captors time to procure further evidence, was improper; the captors not being entitled, under the circumstances of

the case, to any such order; and, particularly, not entitled to an order granting them leave to produce further proof in the case generally, without specifying any particular matter or point to which the further proof should be directed.

The evidence to acquit or condemn, with or without costs or damages, must, in the first instance, come merely from the ship taken, viz., the papers on board, and the examination, on oath, of the master and other principal officers. If there do not appear from thence ground to condemn as enemy's property, or contraband goods going to the enemy, there must be an acquittal, unless from the aforesaid evidence the property shall appear so doubtful that it is reasonable to go into further proof. The claimant is often allowed to supply further proof of his neutral ownership. The captor is rarely allowed to produce other proof than what is furnished by the ship's papers, and the testimony of persons on board; and when he is allowed to produce further proof, the order should confine such proof to a particular point or matter.*

We assert, therefore, that the cause shall be heard and decided in this court, as it ought to have been in the court below, upon the claim itself, upon the papers found on board the vessel, and the depositions of the master and persons on board the vessel at the time of the capture; that is to say, in this case, of the master, the mate, one seaman, and none others.

On these testimonies it is impossible to find justification even of seizure.

II. (*Mr. Evarts.*)—1. The claimants in this case are *neutrals*, subjects of Great Britain, and as such have a *persona standi* in the prize court to allege, according to the regular procedure of the prize jurisdiction, whatever is pertinent and significant on the question "of lawful prize of war," under the law of nations, as bearing upon the sentence of restitution or condemnation to be passed in the cause. Whenever,

* Letter of Sir William Scott and Sir John Nicholl to John Jay, 1 Robinson, 389; The Sarah, 3 Id. 330; The Haabet, 6 Id. 54; The George, 1 Wheaton, 408.

therefore, upon the contestation of these competent litigants, any fact appears to the court exhibiting the capture to be unlawful and void, that fact is to have its consequence in a sentence of restitution, as necessarily as upon any other form of presentation to or cognizance by the court of the fact in question. It is impossible for the court to *ignore* such fact, for it is alleged and proved by a litigant, to whom it is open to allege and prove whatever is pertinent and is true, bearing upon the question of prize or no prize. If the fact thus before the court, under the rules of the law of nations, requires the restitution of the prize, sentence of condemnation cannot pass without a violation of the law of nations.

2. The Sir William Peel with her cargo, when lying at anchor within the neutral territory of Mexico, was captured, in violation of the *absolute* immunity from belligerent visitation, search, or capture, enjoyed by neutral property within neutral territory.

Upon this fact appearing, the capture is, by the law of nations, illegal and void, carrying no rights to the captors, involving the neutral property or its neutral owners in no amenability to the prize jurisdiction on the merits, and exposing the captors to exemplary damages from the justice of the prize court, and to personal punishment from their belligerent government, which their misconduct has compromised with the neutral nation of the injured neutral owners, not less than with the neutral nation whose territory has been violated.

As between belligerents, the rights of war are substantially measured by their power. But as between neutrals, the mere power of the belligerents carries no right whatever. The whole scope and measure of the rights of a belligerent towards neutrals, are determined by the conceded or adjusted rules and limits of interference fixed by the law of nations. These rules and limits relate either to the theatre or region within which *any rights whatever* are conceded to the belligerents towards neutrals, or to the restrictions upon such rights *within the theatre or region where, to any degree*, such rights are conceded.

By the law of nations, within the region invaded by this belligerent capture, *the belligerent had no right whatever* as towards or against neutral nations, nor the property of their subjects. "The rights of war," says Mr. Wheaton, "can be exercised only within the territory of the belligerent powers, *upon the high seas*, or in a territory belonging to no one. Hence it follows that hostilities cannot lawfully be exercised within the territorial jurisdiction of the neutral state which is the common friend of both parties."*

"The maritime territory of every state extends to the ports, &c. The general usage of nations superadds to this extent of territorial jurisdiction a distance of a marine league, or as far as a cannon-shot will reach from the shore, along all the coasts of the state. Within these limits, its rights of property and territorial jurisdiction are absolute, and exclude those of any other nation."†

Every exercise of belligerent right, whether of visitation, search, or capture, within neutral territory, is absolutely unlawful, and every capture within such territory is absolutely void. "There is no exception to the rule, that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful."‡ "All captures made by the belligerent within the limits of this (neutral) jurisdiction are absolutely illegal and void."§ "When the fact is established," says Lord Stowell, "it overrules every other consideration. The capture is done away; the property must be restored, notwithstanding it may actually belong to the enemy; and if the captor should appear to have erred wilfully, and not merely through ignorance, he would be subject to further punishment."‖

The government of the United States, in the most definite and vigorous manner, and in the most public and authentic form, recognized these limitations of belligerent rights, and enjoined upon our cruisers a strict observance of them,

* Dana's Wheaton, § 426.

† Id. § 171.

‡ Id. 429.

§ Id. § 428.

‖ The Vrow Anna Catharina, 5 Robinson, 18, cited and approved, Dana's Wheaton, § 429.

under penalty of its displeasure. Upon a suggestion from the British minister, that the cruiser Adirondack had pushed the chase of a British vessel within the line of neutral maritime jurisdiction, the Secretary of State, under date of August 14, 1862, communicated to the Secretary of the Navy the views of the government in the following terms:

"The President desires that you ascertain the truth of this fact with as little delay as possible, since, if it be true, the commander of the *Adirondack has committed an inexcusable violation of the law of nations, for which acknowledgment and reparation ought to be promptly made.* To guard against any such occurrence hereafter, the President desires that you at once give notice to all commanders of American vessels of war, that this government adheres to, recognizes and insists upon the principle that the maritime jurisdiction of every nation covers a full marine league from the coasts, and that acts of hostility or of authority within a marine league of any foreign country, by any naval officer of the United States, are strictly forbidden, and will bring upon such officer the displeasure of his government."*

Indeed, the *commission* to cruisers, by the law of nations and by the practice of our government, accepts and enforces these limitations on belligerent rights towards neutrals. Thus, the "instructions to private armed vessels," during the last war with Great Britain, enforced this limitation:

"The *tenor of your commission*, under the act of Congress, entitled 'An act concerning letters of marque, prizes, and prize goods,' a copy of which is hereunto annexed, will be kept constantly in your view. The *high seas*, referred to in your commission, you will understand generally to refer to low water mark, *but with the exception of the space within one league, or three miles, from the shore of countries at peace both with Great Britain and with the United States.* You may, nevertheless, *execute your commission* within that distance of the shore of a nation at war with Great

* Lawrence's Wheaton, n. 215, p. 715.

Britain, and even upon the waters within the jurisdiction of such nation, if permitted so to do."*

Accordingly, the Secretary of the Navy, in a communication to the Secretary of State, in answer to the remonstrance of the British minister against the violation of the law of nations by this and other captures in neutral waters, as made known to the Secretary of the Navy by the Secretary of State, expressly disclaims either the right or the purpose to make such captures. He said:

"I do not understand our government to claim the right of, &c., *nor the right, of capturing ships in Mexican waters*, or in any neutral waters."

"It is not improbable that the commanders of some of our cruisers in the Gulf are not accurately informed of the extent of the national rights herein referred to, and the department will lose no time in placing the matter properly before them."†

3. As, then, the capture was made in the neutral waters of Mexico, and upon that mere statement, was—

(*a*) In excess of the cruiser's commission from our government;

(*b*) In excess of exercise of belligerent rights, conceded and submitted to by the neutral nation whose subjects are the owners of the captured property;

As it had been—

(*a*) In terms "strictly forbidden" to our cruisers, and brings upon the captors "the displeasure of the government;"

(*b*) Pronounced by the government "an inexcusable violation of the law of nations, for which acknowledgment and reparation ought to be promptly made—"

The vessel and cargo are not lawful prize of war, and the decree of restitution must be affirmed.

The prize court is but a judicial scrutiny or inquisition, in behalf of the government, to ascertain and adjudicate

* Wheaton on Captures, Appendix, 341.

† Mr. Welles to Mr. Seward, March 5, 1864, Diplomatic Correspondence, p. 548.

whether the *res* is subject to condemnation, as captured within and in pursuance of the belligerent right of the government, conformably to the law of nations.

When the contrary appears, restitution follows, and in no case can the treasury be enriched, and the captors rewarded, by condemnation, when the capture is "an inexcusable violation of the law of nations, for which reparation must be promptly made," and brings upon the captor "the displeasure of his government," provided this character of the capture is before the prize court.

4. It is submitted that no case can be found in which the property of *neutral claimants*, admitted to allege and prove the invalidity of a capture in neutral waters, has been condemned. The case of *The Lilla* (in Sprague's Decisions),* in the District Court of Massachusetts, is no exception to this proposition. The court held the *fact* not made out, and the very brief observation of the court, that, if made out, the objection was not open to the neutral claimant, was but *obiter*.

5. The rule, supposed to be established, and the cases in support of it, that, though actual enemy property captured in neutral waters is not good prize, and must be restored, upon that fact appearing, yet the enemy owner cannot be heard to make the objection, but only the neutral nation whose waters have been entered, rest upon the reason that *no* wrong can be done to an *enemy*, and *no* allegation can be heard in *his* behalf. In other words, that in the case of enemy's property, the fact of invalid capture cannot come before the prize court, except upon the representation of the neutral nation. "It is a *technical rule* of the prize courts," says Mr. Wheaton, "to restore to the individual claimant, in such a case, only on the application of the neutral government whose territory has been thus violated. This rule is founded upon the principle that the neutral state alone has been injured by the capture, and that the *hostile claimant has no right to appear for the purpose of suggesting the invalidity of the capture*."†

* Vol. ii, p. —.

† Dana's Wheaton, § 430.

The *Anne*,* the only case in this court upon the question, was of an *enemy ship*, and so far from disturbing, confirms the position contended for in behalf of neutral claimants. "A capture made within neutral waters," said Story, J., in that case, "is, *as between enemies*, deemed, to all intents and purposes, rightful." "*The enemy has no rights whatsoever;* and if the neutral sovereign omits or declines *to interpose a claim*, the property is condemnable, *jure belli*, to the captors." This case is subject to the further criticism, as an authority on this point, that the facts show, and the court so hold, that the protection of neutrality had been forfeited by the captured ship having commenced hostilities against the captor, so that no claim by the neutral sovereign could have been interposed.†

The *Richmond*,‡ was the case of a municipal forfeiture of a vessel of the United States, the seizure having been made in St. Mary's River, within the Spanish territory of Florida.

On such a case, it is obvious that the violation of Spanish territory could never come in issue, judicially, nor could it in anywise protect the vessel against the municipal justice of its own government.

Upon an examination of the decisions of Sir William Scott, it will be found that the cases in which condemnation has passed, for want of the intervention of the neutral government, have been upon actual enemy's property where no claimant could appear.

III. If, however, this neutral property represented by neutral claimants, shall be held amenable to the prize jurisdiction upon the merits, it is apparent that neither the vessel nor the cargo captured is good prize of war.

1. As to the VESSEL.

Its sincere and permanent neutral ownership is unquestionable, either upon the preparatory, or the further proofs. The "general rumors" to the contrary come to nothing in the face of the positive testimony.

It had violated, or attempted to violate no blockade.

* 3 Wheaton, 435. † Id. 447-8. ‡ 9 Cranch, 102

Matamoras could not be, and Brownsville was not, blockaded.*

The Navy Department expressly excluded Brownsville from the blockade of Texas. "The whole coast of Texas, *except such part as may be necessary for access to the port of Brownsville*, is to be regarded as under blockade."†

If its inward cargo included any contraband, it had all been landed before the capture, and so the ship was free from interference on that ground.

But if contraband had been found on board, the *ship* would not have been involved in condemnation therefrom. There was no connection between the ship or its owners and the cargo or its owners, except that of carriers under the charter-party.

But further. Upon the proofs it is impossible to contend that contraband formed any part of the inward cargo.

Again. If any part of the inward cargo was contraband in its nature, as the voyage was between neutral ports in its project, and was consummated by the delivery of the whole cargo at Matamoras, no offence is predicable of a trade in contraband not seeking an enemy port.

2. As to the CARGO.

The inward cargo captured was neutral property, and was not contraband.

Its value was so trivial as to deserve little attention, and the outward cargo consisted of 904 bales of cotton, and as it was not contraband in its nature, and, whatever its nature, it could not be contraband from its outward destination; as, besides, it was not being exported in violation of blockade, it can be condemned only *as enemy property*.

Upon the proofs it is impossible to contend that any imputation goes beyond the fact, that some undesignated and unmeasured part of this cotton *had been*, before lading, enemy property. But as trade by neutrals with the enemy, and the purchase of enemy property, except in violation of block-

* See The Peterhoff, *supra*, p. 28.

† Mr. Welles to Mr. Seward, Diplomatic Correspondence, 1864, Part II, 548.

ade, are wholly lawful, no consequence of condemnation, *from enemy origin*, can be pretended.*

Finally. The capture was wholly unjustifiable, and the restitution decreed should have been attended with damages and costs.

The innocence of the vessel and her voyage and cargo, was apparent upon visitation, and there was no justification for suspicion or surmise to their prejudice.

When captors thus intercept an open prosecution of an apparently lawful trade, and visitation exhibits every trait of honest neutrality, and the commerce thus indicated is not only lawful, but is constantly engaged in by our own vessels, the integrity of the prize courts demands the infliction of damages and costs as a check to the speculative cupidity of captors.

The features of this case are not distinguishable from those of *The Labuan*, intercepted in her trade at Matamoras, and brought into New York. She was promptly restored, the diplomatic claim for damages immediately recognized, and an adjustment proceeded with.†

The decree of restitution should be affirmed, and the decree charging the claimants with costs and refusing them damages, should be reversed.

Mr. Ashton, Assistant Attorney-General for the United States, and Mr. Eames, for the captors, contra:

I. We could argue, perhaps, that the testimony of all the witnesses taken *in preparatorio* might, in the discretion of the court, have been well received in furtherance of justice. One of them was a person stationed on a New York vessel, temporarily in the harbor, and could not be subsequently procured. We need not so argue. But undoubtedly the further proofs must be heard. There was enough in the mere character of an armed vessel to excite suspicion, even if the court had no right to *look at* all the depositions.

* The Bermuda, 3 Wallace, 557.

† Diplomatic Correspondence, 1863, Part I, p. 476, Lord Lyons to Mr. Seward.

II. The locality of the capture, admitting it to have been made in Mexican waters, is unimportant. Mexico makes no remonstrance; in no way objects. We admit the ingenuity and force also of the opposing argument made by Mr. Evarts. But all the authorities agree that capture within neutral territory can only be averred in support of a claim for restoration by the accredited agent of the government whose neutral immunity has been thus infringed. Neither the enemy claimant, who has no standing in the prize courts, nor the citizen claimant, who has made his property liable to condemnation in prize for unlawful trading with the enemy, nor the neutral claimant, who, at the time of capture, is found in the predicament of having laid aside his neutral character, and having, by unneutral conduct, made himself *pro hac vice* an enemy, can set up for defence against decree of condemnation so incurred, the fact of capture within neutral limits. No case has been or can be produced giving warrant for such allegation. All the adjudged cases state, with equal explicitness and emphasis, first, that the claim of neutral immunity, when properly pleaded by the aggrieved neutral government, is conclusive and effectual in all cases as a defence against a decree of condemnation, and, secondly, that such claim on such ground can be made only by and in behalf of such government whose territorial rights have been infringed.

In *The Purissima Concepcion*,* the leading British case upon the subject, Lord Stowell stated, in the plainest words he could use, that "it is a known principle of this court that the privilege of territory will not itself enure to the protection of property, unless the state from which that protection is due steps forward to assert the right."

The same doctrine is maintained in the other British cases,† and in *The Anne*, in our own.‡

In no one of these cases does the court attempt to make

* 6 Robinson, 45.

† The Etrusco, cited 3 Robinson, 31; The Eliza Ann, 1 Dodson, 244; The Diligentia, Id. 412.

‡ 3 Wheaton, 435.

any distinction between the case of a captured non-combatant *enemy* and a captured *neutral* who has forsaken his neutrality, and by his conduct made himself liable to be captured and condemned as an enemy.

The order issued by the Navy Department to our naval vessels on the 14th of August, 1862, prohibiting the capture of any vessel within the territorial waters of a friendly nation, has no application to a case like this, where the captors proceeded upon the best observations which could be made, and so determined the position of the prize to be such as to make her capture not only lawful, but obligatory upon them in the performance of their duty. The order is intended to protect the territorial immunity of neutral nations, and not to save blockade-runners and contrabandists, in doubtful positions near the neutral line, from the lawful and rightful penalty of their conduct.

III. The testimony brings out the fact made known in other cases, that the whole system of traffic during our rebellion between Matamoras and the British ports, was but a fraudulent pretence of honest and legitimate neutral trade, and that the plan and scheme of the voyages were organized with the purpose of concealing enemy property, and in a manner peculiarly offensive both to the belligerent and the sovereign rights of the United States.

As matter of public law, any neutral vessel engaged and arrested in the prosecution of a traffic so suspicious and demoralizing as that with a neutral along the line of a river on which lay a blockaded and suffering enemy, should be held in a prize court to conclusive proof of her innocence. In the absence of such proof, the inference must be that she is guilty.

The selection of a steamer of the size, strength, and armament of the Peel for the Matamoras trade; the touching at Jamaica,—suppressed by the master, but confessed by the mate,—material, when the ship is afterwards found clandestinely discharging machinery, no machinery being upon the *manifest;* the universal belief at Matamoras that the vessel and cargc were owned by rebel parties, and that the for-

mer was not meant to return to Liverpool, but was intended, after discharging her cotton at Havana and Nassau, to be turned into a rebel privateer; the munitions, arms, and cannon she had on board, suitable only for war service, and not at all excused, but the contrary, by the fact that they were on board when the vessel was bought; the admissions by rebel agents that they had goods aboard; the unexplained failure of Milmo & Co., testifying through their partner, under the order for further proof, to produce the instructions from Henry & Co. as to the disposition of the outward cargo and purchase of the return cargo; the employment by Henry & Co., claimants, of Milmo & Co. to act as their agents, when they were the notorious and advertised commercial agents of the rebel authorities in Texas, known to have little, if any, other business than the obtaining of cotton from those authorities for exportation, as return cargo, through the port of Brownsville, where they had a branch house,—all mark a dishonest purpose on the part of those concerned in this adventure; and the decree of restoration in the court below should be reversed, and both ship and cargo condemned.

They would, indeed, have been so but for the idea of the judge below, that the capture in neutral waters saved them; an idea which, though so ably supported on the other side, we have shown has no foundation in law.

The CHIEF JUSTICE delivered the opinion of the court.

Regularly in cases of prize no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons found on board.

If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof.

In the case now before us some testimony was taken, preparatory to the first hearing, of persons not found on board

the ship, nor, indeed, in any way connected with her. This evidence was properly excluded by the district judge, and the hearing took place on the proper proofs.

Upon that hearing an order for further proof was made, allowing the libellants and captors, on the one side, and the claimants, on the other, to put in additional evidence; and such evidence was put in accordingly on both sides.

The preparatory evidence on the first hearing consisted of the depositions of the master of the ship, the mate, and one seaman. No papers were produced, for none were found on board; a circumstance explained by the statement of the master, that all the papers belonging to the vessel, except the lightermen's receipts for the cargo, were with the English consul and the consignees of the ship at Matamoras.

The depositions established the neutral ownership of the ship and cargo. They proved that the Sir William Peel was a British merchantman; that she had brought a general cargo, no part of which was contraband, from Liverpool to Matamoras; that this cargo, except an inconsiderable portion, had been delivered to the consignee at the latter port; that the cotton found on board was part of her return cargo; that it was owned by neutrals, and had a neutral destination; and that the ship, when captured, was in Mexican waters, well south of the boundary between Mexico and Texas.

This proof clearly required restitution. The order for further proof was, probably, made upon the rejected depositions, which, though inadmissible as evidence for condemnation, may have been allowed to be used as affidavits on the motion for the order.

The further proof, when taken, was conflicting.

The weight of evidence, we think, put the vessel, at the time of capture, in Mexican waters; but if the ship or cargo was enemy property, or either was otherwise liable to condemnation, that circumstance, by itself, would not avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territory had suffered

trespass, for apology or indemnity. But neither an enemy, nor a neutral, acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.

We must, therefore, look further into the case.

There is some evidence which justifies suspicion. Several witnesses state facts which tend to prove that the Peel was in the employment of the rebel government; and that part, at least, of the cotton laden upon her, as return cargo, was in fact rebel property.

There are statements, on the other hand, which make it probable that the Peel was in truth what she professed to be, a merchant steamer, belonging to neutral merchants, and nothing more; that her cargo was consigned in good faith by neutral owners for sale at Matamoras, or to be conveyed across the river and sold in Texas, as it might lawfully be, not being contraband; that the cotton was purchased by neutrals, and on neutral account, with the proceeds of the cargo or other money.

In this conflict of evidence we do not think ourselves warranted in condemning, or in quite excusing the vessel or her cargo. We shall, therefore, affirm the decree by the District Court, and direct restitution, without costs or expenses to either party as against the other.

AFFIRMANCE AND DIRECTION ACCORDINGLY.

UNITED STATES *v.* PICO.

1. When, in Mexican grants, boundaries are given, and a limitation upon the quantity embraced within the boundaries is intended, words expressing such intention are generally used. In their absence the extent of the grant is only subject to the limitation upon the power of the governor imposed by the colonization law of 1824.
2. Where a doubt arises upon the meaning of the grant as to the quantity ceded, reference may be had to the juridical possession delivered to the grantee. This proceeding involved an ascertainment and settlement of the boundaries of the land granted, by the appropriate officers of the gov-