tion within this country of hostile expeditions against other nations. Section 5283, Rev. St., does not make the fitting out and arming of a vessel at a port of the United States unlawful unless it be coupled with specified intents or purposes, one of which is that the vessel, after being so fitted out and armed, "shall be employed * * * to cruise or commit hostilities against the subjects, citizens, or property of" a foreign prince, state, colony, district, or people. The libel of information in this case charges that certain persons did unlawfully fit out and arm the Itata with intent that she should be employed to cruise and commit hostilities against the republic of Chile. On this point there is an issue, and a finding of the truth of the charge is indispensable to a sufficient basis for a lawful decree in favor of the United States. It is a strange anomaly of the case that this issue is made by the republic of Chile. The acts whereby the vessel has become forfeited, as the libel of information alleges, if criminal at all, are so because designed to do harm to the government of Chile; and in the very suit in which it is sought to have the forfeiture adjudged for said cause that government has intervened, claiming a right of property in the vessel, and by its answer has assumed responsibility for the acts alleged to be criminal, and avows that all the persons who participated in said acts, instead of being enemies, are and were its faithful defenders. The bond given for the release of the vessel which is now held in place of the vessel was given in its behalf, so that the penalty in case of a decree in favor of the United States must fall upon an independent nation, and that nation the one for the sake of whose friendship our government has taken the pains to arrest the Itata and now prosecute this case.

It is said that the case should be determined according to the facts existing at the time of the occurrences, and that, if the Itata was then in the hands of insurgents, whose purpose was to employ her as a transport in making war upon the established government of Chile, acts of the insurgent forces in violation of a statute of the United States do not become purged of criminality by the subsequent success of the insurrectionary enterprise. It is unnecessary to admit or controvert the soundness of this proposition, because it does not fit the facts of the case. It is not applicable, for the reason that the Congressional party, instead of being an organization of rebels against the government of Chile, was in fact composed of and controlled by the legislative branch of the national government, and was supported by a considerable part of its military and naval forces. The object of the Congressional party was not revolution, but the preservation of the government by deposing President Balmaceda for maladministration of his office. Balmaceda was not the government. He was merely the highest officer and head of the government. The struggle, therefore, was not between the government and a faction, but between the different departments of the government. While it continued the condition of affairs in Chile was similar to what might have been brought about in the United States if a sufficient number

of senators had voted for the impeachment of President Andrew Johnson, and the vote had been followed by an attempt on his part to forcibly resist removal from office. The right to determine finally every question involved in that struggle belonged to the people of Chile, and their decision must be accepted everywhere as conclusive. It is now an historical fact that the Congressional party, in whose service the Itata was employed, represented the will and sovereignity of the Chilean people. This court is bound, in deciding the case, to take notice of the important facts of history. We cannot be expected to attempt a retrial of the question of right or wrong in what the people in Chile have done for themselves.

By the foregoing considerations I have been led to the conclusion that the accusation against the Itata has not been sustained. The contrary is established, and I think that the decision of this court affirming the judgment of dismissal rendered by the district court ought to be placed upon the ground that the vessel was not intended for service against the republic of Chile.

BOWRING et al v. THEBAUD et al.

(Circuit Court of Appeals, Second Circuit. December 6, 1892.)

No. 2.

1. SHIPPING—WARRANTY OF SEAWORTHINESS—CHARTER STIPULATION.
   The implied warranty of seaworthiness extends to the time when the vessel actually breaks ground for the voyage, and not merely to the time when she begins to take in cargo; and this implied warranty is not in any way varied by an express warranty in the charter that the vessel shall be staunch, strong, etc., "for such voyage," namely, the contemplated voyage "from New York to Progreso, [Mexico,] and back again to New York or Boston;" nor is it varied by a further stipulation that, if the vessel shall be required to go from one dock to another while loading the charterers shall pay towage. Hence there was a breach of the warranty where the vessel was pierced by an unknown obstruction while receiving cargo at a dock to which she had been removed, and the owners were solely liable for a resulting injury to part of the cargo, and there was no case for a general average.

2. SAME—EXCEPTIONS IN CHARTER PARTY.
   The exception in a charter party as to dangers of seas and navigation is not applicable to a hidden danger which, by injuring the vessel at her receiving dock, works a breach of the warranty of seaworthiness.

3. SAME—GENERAL AVERAGE BOND—CONSTRUCTION.
   A vessel was injured at her dock at New York while loading, and one of her compartments was flooded. She was docked and repaired without unloading, the owners of the cargo giving a bond, whereby, after reciting that certain expenses were incurred thereby, they covenanted to pay the "loss and damage aforesaid, and such other incidental expenses thereon as shall be made to appear to be due from us as owners, consignees, or shippers of cargo, * * * according to our interest therein, or responsibility therefor;" and that "such losses and expenses be stated and apportioned in accordance with the established usages and laws of this state in similar cases." *Held*, that this bond merely covered any possible liability of the obligors for a general average contribution, and, there being no case for general average, there was no liability in the bond.