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EXECUTIVE DOCUMENTS.

No. 1.

CORRESPONDENCE

WITH THE

COLLECTOR.

29TH JANUARY, 1861.

CHARLESTON:

STEAM-POWER PRESSES OF EVANS & COGSWELL,
No. 3 Broad and 103 East Bay Streets.

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COLLECTOR'S OFFICE, CHARLESTON, S. C.,
January 28th, 1861.

HON. A. G. MAGRATH,
Executive Office, State Department.

SIR: I beg leave to bring to your consideration the subject of the commercial arrangements of this State, and the probability that the payment of duties and the clearance of vessels will be interfered with by the Government at Washington, in such a manner as to render the transaction of business at this Port difficult and embarrassing.

I have understood that Foreign Ministers have been notified, by the authorities at Washington, that all payments of duties here will be regarded as mispayments, and all clearances as invalid.

I presume the same ground will be taken in relation to vessels and cargoes owned by citizens of the adhering and the seceding States of the late United States.

Under these circumstances, I would be glad to see your views as to the course of duty I should pursue.

I have the honor to be, very respectfully,

Your obedient servant,

W. F. COLCOCK,

Collector.

77

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STATE OF SOUTH CAROLINA,
EXECUTIVE OFFICE, STATE DEPARTMENT,
Charleston, 29th January, 1861.

SIR: Your communication to me, in which you intimate the probability that the commercial arrangements of this State, particularly such as relate to the payment of duties and the clearance of vessels, will be interfered with by the Government at Washington; and that this will be done in a manner intended and calculated to make the transaction of business, at the port of Charleston, difficult and embarrassing: renders it proper, under such circumstances, to consider what course of conduct you should adopt.

The difficulties which you apprehend must have a practical connection with vessels of three kinds: those owned by Foreign Powers; or those owned by citizens of other States, which are still members of the Confederacy of the United States; or those owned by citizens of this State, or any others of the States, which have dissolved their political connection with the United States.

In relation to vessels owned by the citizens or subjects of Foreign Powers, it is not easily understood with what regard to the principles of public law, which now command universal acquiescence, and have been expressly recognized by the Government of the United States at Washington, any difficulty can arise. The commercial intercourse between Foreign Powers and the States which have dissolved their connection with the United States, has been hitherto regulated by the several treaties or conventions made between such Powers and the United States; and such treaties or conventions continue binding on the States which still maintain the Confederation known as the United States.

In those treaties or conventions, the United States, acting through the proper departments of Government, authorized by the Constitution of the United States for that purpose; have

been regarded by Foreign Powers, which were parties to such treaties or conventions, as a political Government, representing all the States of the United States.

The separation of the State of South Carolina and other States from the United States—an act of sovereign power, which each had the right to adopt when it would be proper for its peace and welfare—devolves upon this State or any States in the like condition, a necessity now for the adoption of such treaties or conventions as may be proper for them in their new political condition.

The political independence of each of the several States has not been denied, except by those who have desired that the confederation of the United States should be in fact an unlimited despotism; with no resource for the States which composed it, from the effects of arbitrary power, but in the naked act of revolution; with all the evils which usually attend that movement when made to accomplish a change of Government.

This necessary result of the proposition that the withdrawal of a State from the confederation of the United States was an act of revolution, would be of itself sufficient to show the fallacy of a proposition, which involves that as one of its consequences. But in addition to this, it is to be remembered that the adoption of the Constitution of the United States, succeeded the recognition of the Independence of the several States, named in the Treaty of Peace; that the Constitution itself was but an experiment, from which, while happy results were anticipated, grave doubts of its sufficiency were also entertained; and that the proposition as now stated, would involve the paradox of a State; having, at great cost, secured its Independence, at the earliest period of its security in the enjoyment of that Independence; executing an absolute surrender of it to a Government, the sufficiency of which to subserve the ends for which it was framed, could only be ascertained by time.

The great truth that each State in these United States, was intended to be, and always has been the immediate source of protection to the people who, within its limits, constituted the political community, for whose welfare it was organized; has never been and could never be ignored. The Government of the United States might be thoroughly disorganized, and be rendered incapable of performing any of its functions, yet would each of the States which were united in the confedera-

tion, known as the United States; in its internal condition, present the evidence of a separate Government; perfectly organized, and securing for the political community over which it was placed, all the objects for which Government is instituted. The dissolution of the Union would only tend to disorganize the political agency which the several States, for purposes chiefly concerning their united relations with foreign powers had created. While the disintegration within the limits of each State of the political communities, which were in each State, would involve necessarily the absolute extinguishment of all Government.

The political organization, therefore, of the several States, not less than the circumstances connected with the adoption of the Constitution, conclusively show that these States have always been so constituted; that in the event of their separation from the Confederacy, no other necessity would be devolved upon them than that of establishing those foreign relations, and providing for such other matters affecting their external condition as while in the Union were to be performed by the common agent of all the States.

When, therefore, a State secedes from the Confederation, the act is done by an organized Government; the existence of which is recognized by the Constitution of the United States; the authority of which, for all the purposes of internal government, is paramount to the Constitution of the United States; the functions of which cannot be accomplished by the Government of the United States; and which has been the immediate and exclusive source of the allegiance binding its citizens in subjection to itself, and through it to the Government of the United States.

This brief exposition of the precise relations which have existed between the States, as organized political communities, under settled forms of governments peculiar to each, and the Government of the United States; will be quite sufficient to show Foreign Powers, how unfounded is the statement which may be made, of their present movement being an act of lawless violence, or their internal condition being that of insurrectionary tumult. If a State had not the right to secede from the United States, then would the consequences have followed, that being free before the adoption of the Constitution,

it lost its freedom by becoming a party to a compact to secure, among other things, a more perfect freedom.

The State of South Carolina having seceded from the United States, either in its separate condition, or with the other States which have also seceded, has a right to the enjoyment of that intercourse with the Powers of the world which is intended, in its development, to promote the welfare of the human family; and entitles all to be embraced within its limits who can contribute to its resources for good, or be improved by the benefits it confers. And it is believed that no sentiment of public morality is more cherished, nor any principle of public law better recognized, than that by which any political community is entitled to participate in the benefits, and contribute to the advantages, which result from the intercourse of independent political communities upon terms of peace and amity.

Upon this statement, therefore, of the true condition which this State, and each of the seceding States maintains, there cannot be, with the least respect to the principles of public law, or the usages of independent political communities in their relations, any cause of difficulty in the regulation of their commercial intercourse with each other. Independent Powers permit no interference with the arrangements they may make for their mutual benefit, unless that benefit is secured by a disregard of the obligations which should be recognized towards other Powers.

Your letter, however, leads me to conclude that the difficulty which is apprehended arises altogether from the refusal of the Government of the United States to admit the independence of the State of South Carolina. And as the consequence of this denial, the supposed assertion of its right to enforce its laws within the limits of the State.

All that has been said in relation to the present condition of the State, is explanatory of the position it now occupies as an Independent Power *de jure*. But, if this be denied by the Government of the United States, it cannot be contended, in the face of existing facts, that there is not now, in and over the State of South Carolina, a Government *de facto*; capable of exercising, and actually exercising, all the functions of an Independent Government. To the relations, therefore, which properly arise between such a Government, the Government of

the United States, and Foreign Powers, it is proper briefly to refer.

And I cannot but regard it as fortunate, that in the consideration of the relation which exists, according to the law of nations, between any Foreign Power and a government *de facto*, the late Secretary of State of the United States, and the now Secretary of State of the United States, then the Attorney General of the United States, have given a construction of the law of nations in this respect, in its application to a case probably similar to that which may arise here. In that case, the then Secretary of State, considering the rights of foreigners to trade with a portion of Peru then in a condition of revolt, says "they had a right to enter any port of the Republic open to foreign commerce, and not blockaded, for the prosecution of their commercial enterprises; and it was their duty, after such entrance, to obey the authorities they might find established there. And the same principle which is applicable to the jurisdiction of a *de facto* government over persons, applies with equal force to questions of internal administration touching the public revenue. These are subjects which follow the possession of the powers of Government. The views, therefore, which you present at some length, of the laws of Peru, providing for the regulation of the trade in guano, and prescribing penalties for their violation, have no practical connection with the case of these two American vessels. The true construction of these regulations, their repeal or suspension, or modification or application, are questions of administration, to be decided by the acting administrative Power, to whose decision foreigners must submit." The then Attorney General of the United States, now its Secretary of State, had the same case referred to him for his opinion, considers the case at length, and announces, as one of the leading propositions to support his conclusion, that "when the people of a Republic are divided into two hostile parties, who take up arms and oppose one another by military force, this is civil war."

Proceeding then to affirm the existence of civil war in Peru, the Attorney General adds, in reference to the vessels of the United States, "they had a right to be protected when they obeyed the regulations which they found established and in force at the place." The results at which the Attorney General arrives, are then announced by him in six distinct propositions,

which may be thus stated : that, in a civil war, where one party has possession of a part of the country, and there has officered the local government, the jurisdiction of that party is perfect ; and foreign vessels trading there must conform to its decrees : and that American vessels having obeyed the laws of the place, thus established and acted in pursuance of licenses given by the officers in authority, were not guilty of anything for which the other party could punish or molest them afterwards.

This exposition of the law of nations, as made by the former and present Secretary of State, at a very recent period in relation to a case, the circumstances of which may be safely assumed, as similar to such as will belong to any case arising before you ; may be properly assumed as the rule which at this time will be recognized by the government of the United States, in relation to the vessels of Foreign Powers, entering or clearing from this port.

With this supposition, therefore, which a decent and proper regard for the Government of the United States forbids to be questioned, until that Government shall assume the responsibility of doing so itself, it will be convenient for you easily to dispose of each case which may arise. It will be sufficient for you to notify the parties in all cases, that the State of South Carolina is not a part of the United States ; that the Revenue Laws of the United States are not of force within the limits of this State ; that all commercial regulations at this port are of force by the authority only of the State of South Carolina ; and that no interference will be permitted by the Government of the United States, with such regulations as the State of South Carolina has provided ; nor will the authority of the Government of the United States be permitted to be exercised within the limits of the State. You will, thereupon, proceed to discharge your duties as provided in the Ordinance of the Convention : and, if it should happen that after such explanation, in any case, other questions may arise than such as are provided for in this note, you will make a particular report to this department. Whatever may be the ability of a Foreign Power to secure for its vessels adequate protection, the authorities of this State will regard the attempt of the Government of the United States, to interfere with the vessel of a friendly Power upon the waters over which the jurisdiction of the State ex-

tends; in the same light as if the attempt were made upon a vessel belonging to this State.

The next class of vessels concerning which any question can arise, are vessels owned by citizens of States which are still members of the Confederacy known as the United States. Such vessels are, of course, bound by the municipal laws of the country to which they belong. And it will be for the Government of that country to impose upon these vessels such penalties as it may choose to provide for what it may consider violations of its municipal laws. The questions which arise in relation to such vessels are to be decided by the Government of the United States. If that Government shall consider it proper to forfeit and condemn the vessels, or to subject to money penalties, the citizens who are within its jurisdiction; that question affects that government; and those citizens who are subject to its laws must be subject to its control, however much it may affect them or their property. If it shall become the policy of the Government of the United States to impose such penalties on their citizens as will be equivalent to a prohibition of all intercourse between them and the citizens of this State and other seceding States, it will be a matter which exclusively affects them. To such a policy, if it shall commend itself to the Government of the United States, this State has no right to object.

The last class of vessels which are or may be affected by the interference of the Government of the United States, are those owned by citizens of this or other slaveholding States.

The immediate source of protection to a vessel navigating the high seas is in the right which, under the law of nations, each political community has to use that "which is the great high way of nations" for such purposes as are connected with its welfare. The high seas are the common property of all nations. The municipal laws of each State or Nation apply strictly to its own vessels; they have no authority over the vessels of any other State or Nation. And the municipal laws of a State or Nation are in this respect distinguished in the influence they exercise, from that which is derived from the law of nations; the law of nations being of universal application and obligatory upon all.

The right to navigate the high seas is qualified so far as may be necessary to make that enjoyment consistent with a

due regard to the welfare and convenience of other nations. Hence the absence of that protection which secures the right to navigate the seas, subjects a vessel to a liability to the municipal laws of any other Government, which may please to execute its laws upon that vessel. And doing so, it treats that vessel precisely as it would do one of its own vessels, detected in a violation of its municipal laws. This is done because the vessel is not possessed of the protection which exempts it from a liability to the municipal laws of other nations; and this protection it has not, when it does not acknowledge obedience to an independent political community. Whenever it does owe that obedience, the responsibility of the Government to which that obedience is due, becomes to other nations the guaranty that such a vessel shall not violate, upon the high seas, the laws of nations; nor within the waters of any independent nation the municipal laws of that nation. When, to all the nations of the world, there is this guaranty, in that is found sufficient assurance of the peaceful character and proper conduct of the vessel. And when this is so, the right of the vessel is complete, under the law of nations, to that protection, the essential element of which is exemption from the municipal laws of every other nation.

This responsibility is, therefore, connected with the independence of a nation. But that independence is not to be found only in the recognition of that independence by other nations.

The highest evidence of the independence of a State or Nation is in its ability to prevent the execution of the Laws of any other State or Nation, within its own territorial limits. When no other authority is exercised or can be exercised, within its limits, than such as that State or Nation may prescribe, it asserts in that, the highest attribute of political independence. It is then recognized as a Government *de jure*.

But the authority of a *de facto* Government has been recognized in the United States as sufficient to give to captures made by it the character of captures made by a Government *de jure*. And the policy of the United States has invariably led to its speedy acknowledgment of any Government, where that Government exhibited any evidence of stability, and the people who adopted it were earnest in its support.

The Government of the United States has, therefore, to determine whether it can find authority to capture, on the high seas,

a vessel of a State which has seceded from the United States, and is, in fact, an Independent State, and condemn it as forfeited, because of an alleged violation of the laws of the United States. To constitute, however, a violation of the laws of the United States, because of which a vessel, subject to its laws, under the provisions therein made, may be forfeited and condemned, the special terms of the law must be broken. But all of these laws, of course, provide with certainty certain modes in which their several provisions are to be executed. And these provisions embrace a place, the form, the time, and the persons, at which, how, when, and by whom, certain acts are to be done. If all of these are wanting; if compliance, therefore, with them is a matter of impossibility, even if the owner desired so to do; if there is no Custom House, no Collector, no mode or manner in which an individual can conform to the law; and that omission or absence known to the Government, and not supplied; any attempt to punish an individual or forfeit property, because of a non-compliance with them, would be absurd.

Indeed, the absence of all such regulations may safely be regarded as the acquiescence of the Government of the United States in the rightful independence of the power by which they have been destroyed, and their enforcement rendered impossible. Even then, upon the narrowest and most technical ground, an attempt to forfeit a vessel because of her non-compliance with the provisions of the Laws of the United States, would, before any impartial tribunal or enlightened Judge, be summarily dismissed. Nor would the repetition or renewal of the attempt to enforce such condemnation or forfeiture, be regarded otherwise than the exhibition of a tyrannical will, stripped of the power to make its attempted exercise even respectable.

But in all such questions, the Commercial Nations of the world are also interested parties. And the occasions have often arisen, when a due regard to their own welfare, has forced them to interfere, and direct a suspension of hostilities, which, in their prosecution, could but aggravate the sufferings which a condition of hostilities always begets. The cases in which this interference has been exercised as a right, are well known; and the right, itself, may now be regarded as recognized by the nations of the world. Perhaps it would not be easy to discover a case in which the interference of a Government would be

more purely mischievous, and more palpably designed to do evil, without the slightest chance for good; which would be more wanting in the attributes which give character to the operations of Government, even when offensive; and be more utterly incapable of securing the results which might be given as the pretext for its exercise; than would be furnished in the attempt of the Government of the United States to interfere with the commerce of this State or of any other State which has seceded from the United States; and, in the discharge of its high obligations to the civilization of the present age, assume its place among the Independent Powers of the world, and devote itself to the extension of the blessings which Peace affords.

You will thus see that should the Government of the United States, in relation to Foreign vessels, change the rule which it has declared applicable to its own vessels, it will be for that government to explain to Foreign Nations the reasons which have induced, at this time, that change. And it will be for such Foreign Nations to determine how far such reasons are satisfactory.

In regard to any interference with vessels owned in this State, or any other State which has or may secede, you will, of course, give the earliest notice of it to this Department.

It will be proper for you to deliver a copy of this note to each Consul of a Foreign Power, who may be resident at this place.

Respectfully

Your obedient servant,

A. G. MAGRATH.

To the HON. W. F. COLCOCK,
Collector of the Port of Charleston.







