

NORTH AMERICA.

No. 6. (1863.)

CORRESPONDENCE

WITH

MR. ADAMS

RESPECTING

NEUTRAL RIGHTS AND DUTIES.

Presented to both Houses of Parliament by Command of Her Majesty.
1863.

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Correspondence with Mr. Adams respecting Neutral Rights and and Duties.

No. 1.

Earl Russell to Mr. Adams.

Sir,

Foreign Office, April 19, 1862.

YOU are doubtless aware of the circumstances under which the British steamer "Labuan"* was lately seized at Matamoros, Mexico, by the United States' frigate "Portsmouth," and conveyed to New York as a prize.

That case has appeared to Her Majesty's Government to present a very serious aspect, not only as regards the interests of the British owners of the "Labuan," and of a portion of her cargo, but as regards the principle involved in her seizure and in the conduct and declarations of the captain of the "Portsmouth."

I have not failed to instruct Her Majesty's Minister at Washington to make a fitting representation of the case to the United States' Government, and I learn from Lord Lyons that Mr. Seward has caused directions to be given that seizures under circumstances similar to those under which the "Labuan" was captured shall not be repeated. Mr. Seward, however, though not satisfied that the capture was a legal one, considers it preferable that nothing further should be done in the matter until the result of the judicial proceedings shall be arrived at; in other words, Mr. Seward, though he does not conceal his opinion that the capture of the "Labuan" was unjustifiable, and notwithstanding that the whole case has been confidentially put before him by Lord Lyons, declines to order her release, but insists upon the case being left to the distant and uncertain result of proceedings before a Prize Court.

It cannot be contended that this course, even if it should result in the award of heavy damages, can be otherwise than extremely hurtful and prejudicial to the parties interested; but the possible amount of damages cannot affect the international question of the validity of the capture, and unless the Government of the United States is prepared to maintain, as their Counsel before the Prize Court must endeavour to do, that the capture was justifiable, that Government has not, internationally, any sufficient justification for retaining wrongful possession of the ship and cargo, and sending them for adjudication before the Prize Court, after and notwithstanding the formal intervention of Her Majesty's Government.

The course taken by the United States' Government in the case of the "Labuan" is all the more to be regretted, since it appears from papers which have been communicated to Congress, that in the case of two neutral vessels, the one a Spanish the other a Danish ship, which had been unjustifiably captured, the United States' Government has not only released such vessels without sending them before a Prize Court, but has also consented to pay compensation to those interested therein.

I am, &c.
(Signed) RUSSELL.

No. 2.

Mr. Adams to Earl Russell.—(Received May 3.)

My Lord,

Legation of the United States, London, April 30, 1862.

I HAVE to ask pardon for delaying an acknowledgment of your note of the 19th instant, touching the case of the steamer "Labuan," lately seized by the United States' frigate "Portsmouth," and conveyed to New York as a prize.

Not having received from the Government of the United States any instructions on the subject, and knowing nothing from official sources of the precise facts attending the

* The case of this vessel is still under discussion between Her Majesty's Government and that of the United States.

seizure of that vessel, I am in no situation to express more than my own opinion upon it. I shall do myself the honour to transmit your Lordship's note to the Department of State, where I am led to understand that the matter has already been brought to its attention by Lord Lyons. I do not entertain a doubt of the disposition of the President carefully to respect the just rights of every nation in amity with the United States, and to make the amplest reparation for any casual injury committed in the course of the present difficulties, the moment that the justice of the claim shall have been established.

At the same time, I deem it my duty to represent to your Lordship the fact that the Government of the United States finds itself involved in peculiar embarrassment in regard to its policy towards the vessels of Great Britain from the difficulty, to which I have repeatedly called your Lordship's attention, of distinguishing between the lawful and the unlawful trade carried on upon the coast of the United States in vessels bearing Her Majesty's flag. It comes presented to me in so many forms of evidence that I cannot avoid the painful conviction that a systematic plan founded on the intent to annul Her Majesty's Proclamation by steady efforts to violate the blockade, through vessels either actually British or else sailing under British colours, has been in operation in this island for many months, and becomes more rather than less extensive with the progress of time. If, therefore, it happens that a Spanish or a Danish ship, when seized, is more readily released than a British ship, the reason must be found not in any disposition to be more partial to those nations so much as in the fact that they have been incomparably less involved in the suspicion of attempting illegitimate methods of trade.

The channels through which these enterprizes serve so unfortunately to procrastinate the war by encouraging the hopes of the insurgents are too well known to admit of dispute. It is equally certain that Her Majesty's Government, in reply to the representations and remonstrances heretofore made by me under instructions from my Government, have candidly admitted their inability to put any stop to them whatever. Hence it must naturally occur to your Lordship's mind that if in some cases the Government, driven to the necessity of applying more stringent measures of prevention than it desires to this illicit commerce, should happen occasionally to involve an innocent party in the suspicion attached to so many guilty ones, it must seek its justification in the painful necessity consequent upon the inefficiency of the British law to give it that protection which as a friendly nation it would seem entitled to enjoy.

It may then be reasonably presumed at first blush that the mere fact of sending the steamer "Labuan" to be adjudicated upon by a Prize Court will find its justification in the fact that that vessel had become involved in a suspicion not unfairly attaching itself to all vessels sailing under British colours in the neighbourhood of the place where she was taken. But I regret to be compelled further to apprise your Lordship that in this particular instance the intentions of the steamer "Labuan," from the period of her first departure from Great Britain, have been understood to be such as justly to excite the strongest suspicion, and, taken in connection with her appearance in the spot where she was seized, to constitute a fair question at least for the determination of a Prize Court. Disclaiming the right to enter into the merits of the case on this side of the Atlantic, where I am not in possession of the evidence either of her innocence or her guilt, and disavowing all acquaintance with the views taken of the matter by the President, I have felt myself constrained, by the honour your Lordship has done me in calling my attention to the subject, respectfully to submit my own view of it to your consideration.

Renewing, &c.
(Signed) CHARLES FRANCIS ADAMS.

No. 3.

Earl Russell to Mr. Adams.

Sir,

Foreign Office, May 6, 1862.

I HAVE had the honour to receive your letter of the 30th ultimo.

I am quite willing to leave the case of the "Labuan" to the zealous exertions of Lord Lyons. It is a plain case of justice, and the representations of Her Majesty's Government with regard to it ought to be successful.

With regard to the "systematic plan" which you say has been pursued by Her Majesty's subjects, "to violate the blockade by steady efforts," there are some reflections which I am surprised have not occurred to you.

The United States' Government, on the allegation of a rebellion pervading from nine

to eleven States of the Union, have now for more than a twelvemonth endeavoured to maintain a blockade of 3,000 miles of coast. This blockade, kept up irregularly, but when enforced, enforced severely, has seriously injured the trade and manufactures of the United Kingdom. Thousands of persons are now obliged to resort to the poor-rate for subsistence, owing to this blockade.

Yet Her Majesty's Government have never sought to take advantage of the obvious imperfections of this blockade in order to declare it ineffectual. They have, to the loss and detriment of the British nation, scrupulously observed the duties of Great Britain towards a friendly State.

But when Her Majesty's Government are asked to go beyond this, and to overstep the existing powers given them by municipal and international law for the purpose of imposing arbitrary restrictions on the trade of Her Majesty's subjects, it is impossible to listen to such suggestions. The ingenuity of persons engaged in commerce will always in some degree defeat attempts to starve or to debar from commercial intercourse an extensive coast inhabited by a large and industrious population. If, therefore, the Government of the United States consider it for their interest to inflict this great injury on other nations, the utmost they can expect is that European Powers shall respect those acts of the United States which are within the limits of the law. The United States' Government cannot expect that Great Britain should frame new Statutes to aid the Federal blockade, and to carry into effect the restrictions on commerce which the United States, for their own purposes, have thought fit to institute, and the application of which it is their duty to confine within the legitimate limits of international law.

I am, &c.
(Signed) RUSSELL.

No. 4.

Mr. Adams to Earl Russell.—(Received May 9.)

My Lord,

Legation of the United States, London, May 8, 1862.

I HAVE to acknowledge the reception of your note of the 6th instant, in which you do me the honour to suggest some thoughts on the injurious effect of the American blockade.

In declaring that blockade, the Government of the United States are believed to have done nothing which has not been repeatedly done heretofore, and the right to do which at any time hereafter, whenever the necessity shall appear to call for it, is not distinctly affirmed by the Government of Great Britain. Neither does the fact that this proceeding pressed with the greatest severity upon the interests of neutral nations appear formerly to have been regarded in any other light than as an incidental damage, which, however, much to be regretted in itself, unavoidably follows from the gravity of the emergency which created it.

For it can scarcely be supposed that so onerous a task as a veritable blockade will be undertaken by any nation for causes not deemed of paramount necessity, or will be persevered in one moment longer than those causes continue to operate. I am very sure that it is the desire of the Government of the United States to accelerate the period when the blockade now in operation may be safely raised. To that end it is bending all its efforts; and in this it claims to be mindful, not simply of the interests of its own citizens, but likewise of those of all friendly nations. Hence it is that it views with deep regret the strenuous efforts of evil-disposed persons in foreign countries, by undertakings carried on in defiance of all recognized law, to impair, so far as they can, the efficacy of its measures, and, in a corresponding degree, to protract the severity of the struggle. Hence it is, likewise, that it has been profoundly concerned at the inefficacy of the laws of Great Britain, in which a large proportion of the undertakings originate, to apply any adequate policy of prevention. For I doubt not your Lordship will see, at a glance, the embarrassment in which a country is necessarily involved by complaints raised of the continued severity of the blockade by a friendly nation which, at the same time, confesses its inability to restrain its subjects from stimulating the resistance that necessitates a continuance of the very state of things of which they make complaint.

That a sense of the difficulties consequent upon the action of such persons prompted the enactment of the Statute of His Majesty George the Third, of the 3rd of July, 1819, is made plain by the language of its preamble. It is therein stated that it was passed because the laws then in force were not sufficiently effectual to prevent the evil complained of. It now appears from, the substance of the representations which I have heretofore had

the honour to make to your Lordship that the provisions of that law are as little effectual in curing the evil as those of any of its predecessors. But I am pained to be obliged to gather from the concluding words of your Lordship's note the expression of an opinion that the United States, in the execution of a measure conceded to be correct, as well as justified by every precedent of international law as construed by the highest British authorities, cannot expect that Great Britain should frame new Statutes to remedy the deficiency of its own laws to prevent what it acknowledges, on the face of that Statute, to be evils created by its own refractory subjects. I must be permitted to say, in reply, that, in my belief, the Government of the United States would scarcely be disposed to make a similar reply to Her Majesty's Government were the relative position of the two countries to be reversed.

Permit me, in conclusion, to assure your Lordship that the grounds upon which the representations I have had the honour to make have not been hastily considered. So far from it, the extent of the evil complained of has been under rather than overstated. I have now before me a list of eleven steamers and ten sailing vessels that have been equipped and despatched within thirty days, or are now preparing, freighted with supplies of all kinds for the insurgents, from one port of Great Britain alone. These supplies I have reason to believe to be conveyed to Nassau, which place is used as an entrepôt for the convenience of vessels under British colours employed for the sole purpose of breaking the blockade. I have reasons for supposing that the business is reduced to a system emanating from a central authority situated in London; and further, that large sums of money have been contributed by British subjects to aid in carrying it on. If the United States have, in any of their relations with Her Majesty's Government, committed some act not within the legitimate limits of international law which justifies the declaration of a disposition not to provide against such obvious violations of the neutrality proclaimed at the outset of this deplorable struggle, I trust I may be permitted to ask that it may be so clearly presented to their consideration by your Lordship as to supply the means either of explanation or of remedy.

Renewing, &c.
(Signed) CHARLES FRANCIS ADAMS.

No. 5.

Earl Russell to Mr. Adams.

Sir,

Foreign Office, May 10, 1862.

IN the letter I had the honour to receive from you yesterday, you appear to me to have confounded two things totally distinct.

The Foreign Enlistment Act is intended to prevent the subjects of the Crown from going to war when the Sovereign is not at war.

Thus private persons are prohibited from fitting out a ship of war in our ports, or from enlisting in the service of a foreign State at war with another State, or in the service of insurgents against a foreign Sovereign or State. In these cases the persons so acting would carry on war, and thus engage the name of their Sovereign and of their nation in belligerent operations.

But owners and masters of merchant-ships carrying warlike stores do nothing of the kind. If captured for breaking a blockade or carrying contraband of war to the enemy of the captor, they submit to capture, are tried, and condemned to lose their cargo.

This is the penalty which the law of nations has affixed to such an offence, and in calling upon Her Majesty's Government to prohibit such adventures, you in effect call upon Her Majesty's Government to do that which it belongs to the cruisers and the Courts of the United States to do for themselves.

There can be only one plea for asking Great Britain thus to interpose. That plea is, that the blockade is in reality ineffective, and that merchant-ships can enter with impunity the blockaded ports.

But this is a plea which I presume you will not urge.

Her Majesty's Government have considered the blockade as an effective blockade, and have submitted to all its inconveniences as such.

They can only hope that if resistance should prove to be hopeless, the Confederate States will not continue the struggle; and that if, on the other hand, the restoration of the Union should appear to be impossible, the work of devastation now going on will cease.

Her Majesty's Government can only desire the prosperity of the inhabitants of the United States, whatever may be the event of the present civil war.

I am, &c.
(Signed) RUSSELL.

No. 6.

Mr. Adams to Earl Russell.—(Received May 14.)

My Lord,

Legation of the United States, London, May 12, 1862.

I HAVE the honour to acknowledge the reception of your note of the 10th instant. From the purport of it I am led to fear that I may have been unfortunate heretofore in my attempts to express my own meaning. If I have appeared to your Lordship to confound two things so very dissimilar as the penalties of the Enlistment Act and the liabilities which follow from the attempt to break a blockade, I can only say that the fault must be laid to my want of ability to use words properly to express my thoughts.

The position which I did mean to take was this: that the intent of the Enlistment Act, as explained by the words of its preamble, was to prevent the unauthorized action of subjects of Great Britain disposed to embark in the contest of foreign nations, from involving the country in the risk of a war with those countries. This view of the law does not seem to be materially varied by your Lordship. When speaking of the same thing you say that the law applies to cases where "private persons so acting would carry on war, and thus might engage the name of their Sovereign and of their nation in belligerent operations."

It is further shown by that preamble, that that Act was an additional act of prevention, made necessary by experience of the inefficacy of former Acts passed to effect the same object.

But it is now made plain that whatever may have been the skill with which this latest Act was drawn, it does not completely fulfil its intent, because it is very certain that many British subjects are now engaged in undertakings of a hostile character to a foreign State, which though not technically within the strict letter of the Enlistment Act, are as much contrary to its spirit as if they levied war directly. Their measures embrace all of the operations preliminary to openly carrying on war, the supply of men and ships and arms and money to one party, in order that they may be the better enabled to overcome the other, which other is in this case a nation with which Great Britain is now under Treaty obligations of the most solemn nature to maintain a lasting peace and friendship. The Government of the United States having in the course of its hostile operations had occasion to experience the injurious effects of this virtual levying of war against itself from the ports of a friendly Power, and seeing the obstacle in the way of the removal of them to be alleged to be the inefficacy of a Statute intended to effect that object, does not regard it as asking anything unreasonable, or more than it would in like case be willing itself to grant, if it solicits some action to render effective the spirit as well of the law as of Her Majesty's enunciation of the national will.

I perceive that your Lordship appears to be of opinion that in this proceeding the Government of the United States is asking more than is reasonable. It is in your view sufficient to declare that owners and masters of merchant-ships fitted out with intent to break a blockade, or carry contraband of war to one of two parties engaged in war, are subject to capture, trial, and condemnation, if caught by the offended party. And hence, in this case, that the Government of the United States, in calling upon Her Majesty's Government to prohibit such adventures, is in effect calling upon it to do that which it ought to do, and fails to be able to do, for itself. The only valid plea, your Lordship remarks, for asking interposition is that the blockade is in reality ineffective; and this you very justly presume I shall not be disposed to urge.

But I pray your Lordship's pardon if I submit that you appear to have entirely overlooked another plea, which I am confident enough to imagine of no inconsiderable weight. That plea is, that the Kingdom of Great Britain endeavour, in spirit as well as in the letter, to preserve the principle of neutrality, if not of friendship, towards a foreign nation in amity with it, to which it has pledged itself. The precise mode in which that shall be done it does not presume to prescribe. That the toleration of such conduct in subjects of Great Britain as I have had the pain heretofore to expose is surely a violation of that neutrality, is justly to be inferred from the very language of Her Majesty's Proclamation. For it is therein declared that precisely such acts of theirs as I have been compelled here to complain of, are done "in derogation of their duty to her as a neutral Sovereign, and

incur her high displeasure." If such, then, be the true character of the proceedings to which I have heretofore called your Lordship's attention, they surely merit something more of notice from Her Majesty's Ministers than an intimation that they will be suffered to pass unreprieved unless the punishment shall be inflicted by the nation whom they are designed to injure. The object of the Government of the United States has not been to relieve itself of the duty of vigilance to capture offenders against the law; it has rather been to avoid the necessity of applying additional stringent measures for their own security against British subjects found to be engaged in such illicit enterprises, made imperative by the conviction that no preventive co-operation whatever can be expected from Her Majesty's Government; it has rather been to avoid the risk of confounding the innocent with the guilty, because all happen to be involved in a general suspicion; and lastly, it has rather been to remove at as early a day as may be, consistently with its own safety, the restrictions on the trade with foreign countries which these evil-doers are labouring with so much industry to force it to protract. Your Lordship's language leaves me little hope of any co-operation of Her Majesty's Government to these ends. Nevertheless, I trust I may be permitted to indulge the belief that the time is not now far distant when the difficulties thus interposed in the way of its progress will have been so far removed by its own unassisted action as to relieve both countries from the painful necessity of further continuing the discussion.

Renewing, &c.
(Signed) CHARLES FRANCIS ADAMS.

No. 7.

Earl Russell to Mr. Adams.

Sir,

Foreign Office, May 17, 1862.

I DO not wish to prolong this correspondence, and shall only make one remark in answer to your last letter.

If the British Government, by virtue of the prerogative of the Crown, or by authority of Parliament, had prohibited, and could have prevented, the conveyance in British merchant-ships of arms and ammunition to the Confederate States, and had allowed the transport of such contraband of war to New York and to other Federal ports, Her Majesty's Government would have departed from the neutral position they have assumed and maintained. If, on the other hand, Her Majesty's Government had prohibited, and could have prevented, the transport of arms and ammunition to both the contending parties, they would have deprived the United States of a great part of the means by which they have carried on the war. The arms and ammunition received from Great Britain, as well as from other neutral countries, have enabled the United States to fit out the formidable armies now engaged in carrying on the war against the Southern States; while by means of the blockade established by the Federal Government, the Southern States have been deprived of similar advantages. The impartial observance of neutral obligations by Her Majesty's Government has thus been exceedingly advantageous to the cause of the more powerful of the two contending parties.

I am, &c.
(Signed) RUSSELL.



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