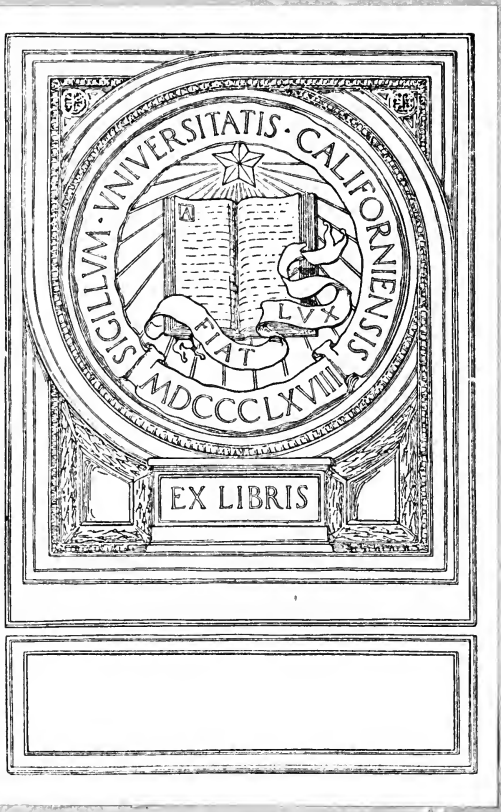
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A

HISTORICAL ACCOUNT

OF THE

NEUTRALITY OF GREAT BRITAIN

DURING THE

AMERICAN CIVIL WAR.

BY

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A

HISTORICAL ACCOUNT,

&c.

INTRODUCTION.

THIS book is primarily intended as a contribution to the history of International Law. The struggle in which the American people were engaged between the years 1861 and 1865 was, from its magnitude, from the fact that it was partly maritime, and from the extensive intercourse which the United States maintain with Europe, singularly fertile in questions regarding the rights and duties of belligerent and neutral. I propose to give a succinct and connected account of these questions as they arose. Dry and uninteresting as they will probably appear to most men, such controversies have importance for all civilized communities, since there are few nations which can indulge the hope that they will not some day be plunged into war, and none that can expect to escape all contact with it.

I desire, in the second place, to exhibit, by means of such a narrative, a general view of the conduct of the British Government in relation to the war. In this way alone can it be fairly judged. It is only by taking them in connection with one another, with the general history of the revolt, and with the course pursued by other neutral nations, that the acts of Great Britain can be seen as they were, and in their true magnitude and proportion. Nearly five years have now passed since the restoration of peace. Yet the Government, if not the people, of the United States continues to cherish towards Great Britain, and towards her alone, a lingering

sense of injury, to descant upon its unforgiven grievances, and to present again and again its claims for redress. I earnestly hope that before these pages are in print, the bitterness which remains may have passed away. But the complaints themselves are on record, and cannot be effaced from the history of the time. Let us retrace, then, the course of events from the beginning. Let the facts be stated as they occurred, and let them be exposed to the strongest light.

The materials of which I have made use consist chiefly of the despatches and State-papers which have been published by the two Governments.[1] These, or the material parts of them, have been placed, so far as the necessity for reasonable condensation would admit, under the reader's eye. I shall attempt, in two introductory chapters, to sketch the causes which produced the war, and the events which immediately preceded it, since there is no possible aspect of it in which these do not form essential parts of its history.

Discussions between Governments, conducted in writing, have a certain tendency to discursiveness. Issues raised on one side are pursued on the other; the question, as it expands into a controversy, is prone to spread over too ample a field, and wander into channels from which it would soon be recalled were it carried on in the presence of a judge or arbiter. The despatches which passed between the Governments of the United States and of Great Britain, in reference to what were called the "*Alabama* Claims," ought certainly to be ranked high in this class of compositions. They are forcible, ingenious, and even eloquent; but no one who reads them, I think, can fail to see that they are occasionally overloaded with reasoning, and that points were sometimes disputed to which a

[1] All the despatches to which reference is made, except a few taken from American sources, are among the papers which have been presented to Parliament. I have thought it sufficient to refer to them by their dates.

judge would pay no attention. I shall be content, where I have occasion to notice arguments as well as facts, to advert to such arguments as appear relevant and material.

A writer who undertakes to deal with questions lately disputed,—some of them still in dispute,—between a foreign Government and his own, can scarcely hope to be perfectly impartial. But he is bound, before expressing an opinion, to clear his mind from any conscious bias, and he has a right to expect the same sincerity from others. America has many jurists, especially in the department of International Law, whom it would be an impertinence to praise. Some of them have done me the honour to enter into correspondence with me; I regard them as friends, and am ambitious of their good opinion. They will feel, as I do, that divided as we are and must be by our national sympathies, we yet owe, as jurists, the highest candour to one another. If I fail in that duty—if I attempt to apply to America any rule which I should hesitate to apply under like circumstances to England—I am justly to blame, and what I write deserves no attention. International Law knows no country; in aim and intention, at least, its rules are uniform and universal, though the conception of them has varied more or less in different places according to differences of national policy, of local jurisprudence, or of the traditions in which statesmen and lawyers are bred. What it prescribes to any one State, that it imposes on all; and the body of opinion which it represents, and the judgment to which in cases of controversy it appeals, are those, not of England or of America, of Germany or France, but of the whole civilized world.

All Souls College, Oxford,
February, 1870.

CHAPTER I.

Structure of the American Commonwealth.—Separatist Tendencies and Influences.—Consolidating Forces.—The Slavery Question; its Rise and Progress.—The Territories, and the Effect produced by the Controversy about them.—The Fugitive Slave Law.—The Tariff.

THE quick growth of the American Union, its loose political organization, and constant tendency to expansion, have throughout its short history given to it a character of extraordinary vigour, mixed with somewhat of fragility and infirmity. Composed in large measure of emigrants, and the children of emigrants, from various parts of Europe, without a common centre of legislation or the pervading control of a strong central Government, this great people, rapidly formed and still more rapidly increasing, seemed to want some of those securities for permanent cohesion and for the steady maintenance of national life on which older communities have been accustomed to rely. Its Constitution, which appeared to be neither national nor federal, but, as Madison said, a composition of both, was a novel experiment; and, though the work of some of the ablest and wisest men who ever lived, had originated in a compromise between conflicting interests, and was stamped with the character of a compromise. The general nature of the rights and obligations created by it had been a subject of dispute among American statesmen and jurists; and a settled difference of opinion, turning partly on the question of policy, whether it were good

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or bad to strengthen the central authority, and draw tighter the ties which bound the States together, partly on the question of constitutional law, what was the actual stringency of those ties and measure of that authority, had always divided, and appeared likely to continue to divide, the mass of the American people. From the very first, it was said many years ago, "one great party has received the Constitution as a federative compact among the States, and the other not as such a compact, but as in the main national and popular."[1] Six or seven times at least, on distinct occasions, between 1797 and 1840, it had been solemnly asserted to be federative, and not national, by the Legislatures of several States. Nor was this a mere theoretical question, which could never assume practical importance. The powers with which the Constitution invests the central Government of the Union were more august indeed, but to the private citizen less visible and palpable, less directly and intimately connected with his daily life, than those which were

[1] For a precise expression of the former of these two views it has been usual to refer to the Kentucky Resolutions of 1798, and the Virginia Resolutions of 1799, drawn respectively by Jefferson and Madison, and adopted by the Legislatures of those States. The first Kentucky Resolution was as follows:—

"*Resolved*,—That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government, but that, by a compact under the style and title of a Constitution for the United States and of Amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each State to itself the residuary mass of right to their own self-government, and that, whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and as an integral party, its co-States forming, as to itself, the other party; that the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

reserved to the Governments of the several States. The laws which secure to each man his life, liberty, and property, and regulate his social and family relations—these laws, though their ultimate guarantees might be sought in the aggregate force of the entire commonwealth, were in fact made and enforced by his State alone, and could not, without a breach of the Constitution, be made or enforced, altered or interfered with, by the authorities, legislative or executive, of the Union. His State, therefore, was to him the nearest and most sensible object of those feelings, and source of those benefits, which men commonly experience towards and receive from their country, and which are the real basis of the sentiment of patriotism and the moral duty of allegiance. The law itself under which he lived recognized this relation, for it placed allegiance to his State in its list of duties, and treason against the State in its catalogue of crimes.[1] It was evident, then, that should a conflict

[1] For example, the subjoined sections of the New York Codes as reported complete by the Commissioners (these Codes however, I believe, are not yet law):—

"*Political Code.*—§ 3. The sovereignty of the State resides in th e people thereof, and all writs and processes are issued in their name."

"§ 10. Allegiance is the obligation of fidelity and obedience which every citizen owes to the State."

"*Penal Code.*—§ 57. The following acts constitute treason against the people of this State:—

"1. Levying war against the people of this State within the State or,

"2. A combination of two or more persons by force to usurp the Government of this State, or to overturn the same, evidenced by a forcible attempt made within this State to accomplish such purpose; or,

"3. Adhering to the enemies of this State while separately engaged in war with a foreign enemy in the cases prescribed in the Constitution of the United States, and giving to such enemies aid and comfort in this State, or elsewhere."

"§ 60. Every person convicted of treason shall suffer death for the same."

Story (*Commentaries on the Constitution of the United States*, § 1,301) suggests a doubt whether there can under the Constitution be a case of treason against a State, which is not at the same time treason

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ever arise between the substantial interests, or the real or supposed rights, of a State or any number of States, and the rights and interests of the Union, there might arise also in the breasts of many Americans a conflict of sentiment, and a conflict, real or supposed, of public duties, such as could not possibly occur in any country differently constituted. The chances of such a contingency seemed to multiply as the number of States multiplied, as population increased at a rate which promises to raise it to a hundred millions before the end of the present century, and as the dominion of the Republic spread fast and far, colonising and peopling the shores of the Pacific, covering by degrees the greater part of an immense continent, and embracing new varieties of climate, race, and soil.

Are Americans then deficient in national feeling? On the contrary, there is no people in the world in whom it burns more strongly. Indeed, one of the things which we learn from the history of the United States is

against the United States, and, therefore, cognizable exclusively by the Federal Courts.

Mr. Seward (10th April, 1861) writes to Mr. Adams:—

"One needs to be conversant with our federative system, as perhaps only American publicists can be, to understand how effectually, in the first instance, such a revolutionary movement must demoralize the General Government. We are not only a nation, but we are States also. All public officers, as well as all citizens, owe not only allegiance to the Union, but allegiance also to the States in which they reside."

"The people of each State," said the Supreme Court in *The County of Lane* v. *the State of Oregon*, "compose a State, having its own Government, and endowed with all the functions essential to a separate and independent existence."

"Not only," said Chief Justice Chase in a recent case, "can there be no loss of separate and independent autonomy to the States through their union under the Constitution, but it may not unreasonably be said that the preservation of the States, and the maintenance of their Governments, are as much within the care and design of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States."—*Texas* v. *White*, Wallace's Reports in the Supreme Court, vol. vii, p. 560.

the rapidity with which this sentiment may rise in the hearts of men towards a newly-adopted country, which they believe to have given them prosperity, whose present and prospective greatness flatters their imaginations, and in whose political institutions they feel not only content but pride. The various influences which tend to produce throughout the States, and among men gathered from all countries, a certain uniformity of manners, habits, and modes of thought; the diffusion of education through schools of one general type; the commanding and levelling force of public opinion in a great democratic community; even the strong party spirit and imperious party organization,—I may add, in ordinary times, even those often-recurring elections to Congress and to the Presidential Chair which periodically agitate the country from end to end,—contribute to this result. The general government of the Union is by these made a matter of interest to every American, and of no languid interest. Every American has a voice, which he is constantly summoned to exert, in determining the hands in which that government shall be lodged; and the whole people are incessantly marshalled under flags which, if they have not always a very definite device, are at any rate not local or sectional. The restless, migratory character of the population, which rarely permits all the members of one family to remain denizens of any State, assists, as Mr. Motley has observed, to interlace the States with each other, and all with the Union.[1] It may be added that the general tendency which exists in Europe towards the consolidation of small communities and the concentration of power, operates with all its force in America; where, if we look to the future, it has both its advantages and its dangers. The progress of mechanical skill and invention,

[1] It appears from the Census Returns of 1860, that in the previous ten years one-fourth of the whole free native-born population had migrated from State to State.

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nowhere more active than here, assists this tendency; for it destroys the barriers raised by distance, promotes intercommunication, quickens the diffusion of thought, brings large areas under easy control, facilitates the transaction of business on a great scale, and opens many upward and converging roads to personal ambition. Nowhere, again, are the advantages of belonging to a great State more keenly realized; perhaps they are nowhere felt with equal keenness; and it is natural that this should be so. Rapid aggrandizement is the strongest of all incentives to national pride, and there are motives, more solid than national pride, which may well lead an American to desire earnestly that the United States should always continue to be the greatest Power on the American Continent.

The loosely compacted structure of the Commonwealth has at the same time served to protect it against risks to which it would otherwise have been exposed. The pressure of the common Government has been almost unfelt, and the strain upon its powers of administration has been slight, since these powers are contracted in themselves, though exercised over an immense area. It is not at Washington, not from Washington, that the American people are practically governed. There could be little to provoke that impatient desire for independence which springs from a sense of neglect or oppression so long as each State raised its own taxes, made and administered its own laws. Local interests and passions, which might have kindled into flame if brought into collision in a single representative assembly gathered from places so remote from each other, had their own spheres of activity assigned to them elsewhere. Lastly, the process by which new States are formed as population spreads over vacant territory has in it somewhat of the smoothness and regularity of natural growth, and is well devised to satisfy as early as possible the settler's craving for self-government, whilst keeping unbroken the ties of attachment to the Union.

Rarely, therefore, until of late years, have American statesmen suffered themselves to harbour any misgiving as to the permanence and stability of the Union. Nor was this confidence unreasonable. It might well be judged improbable that any serious attempt would be made to sever the tie which bound the States together. It was certain that any such attempt, if made, could proceed from only one cause,—a violent conflict of interest or of sentiment, or both, and that conflict sectional, defined by a geographical line, and arming large portions of the Commonwealth against each other. It appeared certain also that such an attempt, however and wherever it might originate, would be strenuously resisted.

This improbable event, however, took place; the conflict actually arose; and, within the lifetime of men born before the ratification of the Constitution, the Union was torn by an extensive revolt, followed by a civil war the greatest and most sanguinary that the world has ever seen. I am about to retrace briefly the causes and the approach of this tremendous calamity; the growth within the United States of a powerful and compact slavery interest; the localisation of it in the South; the rise in the North of interests and sentiments hostile to slavery; and the circumstances under which, on the part of the South, suspicion and estrangement deepened into fear and animosity, and animosity finally broke into war.

Slavery and free labour cannot thrive together: each has a tendency to encroach upon and destroy the other, and the issue of the contest is determined by the conditions under which it is carried on. Where, as in newly settled countries, mere labour in its rudest form is very scarce and very profitable, the temptation to procure slaves is strong; beyond the first cost of the slave and his bare subsistence, all the profits of his work are reaped by his owner, who secures at the same time a steady supply, and is relieved from the necessity of bargaining

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for the services of freemen on their own terms.[1] Under ordinary circumstances, however, the superior workman, who toils for his own profit, must, where the competition is possible, drive out and supersede the inferior, who drudges to avoid punishment; and to the habits of a large, free, and industrious population, slavery as an institution soon becomes distasteful and odious. But where slavery has once become firmly established, it opposes, by the very fact of its existence and by the condition of society which it tends to create, a barrier, hard to surmount, against such competition. The business, it has been observed, in which slaves are generally engaged, be it what it may, soon becomes debased in public estimation. In a country filled with slaves, labour belongs to the slave, and degrades the freeman.

In the American Colonies south of the Potomac, negro slavery, once introduced, took root and spread rapidly. In the wooded uplands which cover a large part of these countries the climate is generally temperate and the soil of moderate fertility; but they contain near the coast, and along the banks of rivers, great tracts of flat and rich land on which rice, cotton, and tobacco grow luxuriantly, which yield a lavish return to very rude labour, and to the tillage of which negroes, from their capacity of enduring heat, were well adapted. The great rice-grounds of South Carolina were thus, by the middle of the eighteenth century, brought into cultivation entirely by gangs of slaves, largely outnumbering the scanty white population which dwelt among them. There were here also greater inequalities of condition than in the North: the settled parts of Virginia, especially the tide-water districts, were mostly held in large estates, and throughout the four Southern Colonies the pursuits

[1] The earlier settlers in the Indiana Territory (now Indiana, Illinois, Michigan, and Wisconsin) made repeated but fruitless efforts between 1803 and 1807 to obtain from Congress a temporary suspension of the prohibition of slavery within that Territory.

of the people were almost exclusively agricultural and pastoral.[1]

Yet it has been reasonably doubted whether even in these regions negro slavery would have been able to make head against the immigration from Europe which their great natural advantages were calculated to attract, but for the stimulus given to the production of cotton by the improvements introduced almost simultaneously in America and England into the processes of cleaning the raw fibre for exportation, and of manufacturing it into yarn and cloth. Whitney's saw-gin, the simple invention of a man of rare mechanical genius, raised the exportation in one year from 187,000 lbs. to nearly eight times as much. American cotton, which up to 1793 was almost unknown in the markets of Europe, had in a few years secured a monopoly of them; and the value of land and labour suitable to cotton rose with the rising demand of those markets.[2] From the immense consumption of cotton fabrics, and the steady flow of

[1] The number of slaves south of the Potomac in 1754 is estimated by Mr. Bancroft at 178,000, against 71,000 in the middle and northern colonies.—*History of the American Revolution*, vol. i, p. 146.

The Census of 1790 gives the following results:—

Virginia	293,427
North Carolina	100,572
South Carolina	107,094
Georgia	29,264
Kentucky	11,830
Tennessee	3,417
Total	545,604

[2] In 1784 it is recorded that eight bags shipped to England were seized at the Custom-house as fraudulently entered, "cotton not being a production of the United States." The export of 1790, as returned, was 81 bags.—Greeley's *American Conflict*, p. 58. The quantity imported here from the United States in 1793 was 187,000 lbs. against an import (in the previous year) of 28,706,675 lbs. from other parts of the world.—Ellison's *Slavery and Secession in America*, p. 14.

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British capital into the trade, the demand has more than kept pace with the supply.

Lancashire was the great workshop to which the cotton-grower sent his produce. Lancashire, dusky with smoke and covered with populous towns, represents to our eyes the growth of the industry by which its looms have been fed; and Lancashire manufacturers, especially of late years, have been tempted to build mills faster than the price of the raw material would enable them to work at a profit. In the five years ending with 1850 the total quantity of raw cotton consumed in the United States and exported was 4,578,598,117 lbs., and the average price from 8 to 9 cents; in the five years ending with 1860 the quantity was 8,403,993,782 lbs., and the average price from 11 to 12 cents. The consequence was that, as the Lancashire manufacturer multiplied his spindles and increased his business, so the planter spent all that he could afford in buying land and slaves. It was roughly computed that the rise of a cent in the price of cotton added a hundred dollars to the value of an average field-hand. Negroes were bred for sale where they could not be employed in large numbers on the soil. All domestic service was performed by them, and, throughout the greater part of the South, every kind of unskilled labour; they were employed in the fisheries and turpentine woods of North Carolina, as lumbermen in the South Carolina swamps, and as ordinary farm-labourers on the wheat and clover fields of Eastern Virginia. Of the entire mass of property, real and personal, in the Southern States, more than one-half in estimated value consisted of negro slaves;[1] and, since they constituted the whole available stock

[1] The Census of 1860 gives 3,953,760 as the total number of negro slaves in the Slave States. Of these 3,404,373 were held in those States south of the Potomac. An "average field-hand" was computed, at the time of Mr. Olmsted's Journeys, to be worth 500 dollars, but this, in his opinion, was below the mark. The price had certainly risen before 1860.

of unskilled labour, they were necessary to support the value of the other half. "In a slave-holding State," wrote Mr. Cobb, of Georgia, "the greatest evidence of wealth in the planter is the number of his slaves. The most desirable property for a remunerative income is slaves. The best property to leave to his children, from which they will part with the greatest reluctance, is slaves." "If," said Mr. Hammond, of South Carolina, in 1858, speaking in the Senate of the United States, "if you search closely, you will find that there is no man living in the Southern States, not excepting the Federal office-holder, but that the labour of the negro contributes the chief supply to that fund from which he derives his gains. There is no property here which does not derive from it its chief value. . . . . To the labour of the negro, under the white man's superintendence and control, we owe nine-tenths of the products of the soil, the whole of the cotton, sugar, and rice crops, three-fourths of the tobacco, hemp, and grain crops, and a large part of the products of the forest. These are not all, but we will specify no more! For the most part the field of the white man's industry begins where the labour of the negro ends. That which has been produced must be turned to account. We need but look at our railroads and steam-boats to see how many white men make their living by bringing to market that which they themselves have not produced, and could not produce. Our towns are crowded with those who find their sole occupation in the receipt, transfer, and sale of these same products of negro labour, and in the trade which springs from its exchange for other commodities. The towns themselves have no other origin than the facilitating of this exchange."

The four million persons (in round numbers) thus held in servitude within the Southern States, were not only slaves but people of a distinct race—a race marked

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by strong physical characteristics, which in the eyes of their white masters branded them with an indelible stamp of inferiority and degradation. This circumstance, while it made the negro's condition hopeless, and himself an object less for the sympathy we owe to our fellow-creatures than for the capricious humanity which men bestow on the brute creation, was a bond of union, which might with opportunity become a dangerous one, among the slaves themselves. They were for the most part extremely ignorant; and to the defects peculiar to the negro character were added in them the animal habits and incapacity for forethought and self-control which slavery almost necessarily engenders. But, though degraded, they had the power, which brutes have not, of combination and of receiving and communicating ideas; and they lived in a country fenced round by no natural barriers, and in more or less close neighbourhood to a population who, without much sympathy for the slave himself, detested slavery, and amongst whom therefore, should they escape, their owners could reckon on no willing assistance in recovering them.

It was a natural effect, then, of negro slavery as it existed in America, not only to breed in the Southern people habits of life unlike those of their Northern fellow-countrymen, and a distinct type of character which had in it somewhat of pride and imperiousness, but in the conduct of public affairs to keep alive in them a constant sense of insecurity. The Southerner was never without a forecast of possible danger. All that he had, and the safety of all whom he held dear, depended on his being able to keep a multitude of human beings, belonging to an alien race, in the condition of chattels, and to maintain an institution assailable from within and from without, which had perished everywhere else except in Cuba and Brazil, and which he knew to be discredited and condemned by the general opinion of the civilized world. He accus-

tomed himself to impute this insecurity to the machinations of Northern abolitionists; but no machinations were necessary to produce it, and it had in fact existed long before the anti-slavery sentiment woke into activity in the Northern States. The very fact that opinion was against him, that he was a mark for reproach which he thought undeserved, and that this opinion was largely shared by his own countrymen, disposed him to assert and defend his rights with somewhat of that acerbity and tenacity which belong to party spirit. He knew also that the property he held was, even while it continued his own, liable to depreciation from other causes; for the value of slave-labour, which is always, in the gross, labour of an inferior sort, diminishes fast with the diminishing productiveness of the land to which it is applied. The strength of these feelings has been sometimes exaggerated by anti-slavery writers, but it is impossible not to see that they largely influenced—nay, they may be said to have ruled—the action of the Southern Legislatures in their internal Government, and that of Southern members in the Federal Congress. To ward off not only every attack, but every approach, of the anti-slavery sentiment, to protect, and if possible increase, the political influence of the slave-holding interest in the public councils, and to enlarge its territorial dominion,—these were the objects which the South during a long course of years kept steadily in view and pursued with remarkable tenacity of purpose.

The sterner climate and less kindly soil of the Northern States, which yield no return, unless to thrifty and persevering labour, made slave-holding there unprofitable, and it soon became repugnant to the temper and habits of the people. It was abolished or prohibited altogether by the State Constitutions of Vermont and New Hampshire, and by the new Constitution framed in 1780 for Massachusetts; and Emancipation Acts, gradual in their operation, were passed between 1770 and 1804

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by Pennsylvania, Rhode Island, Connecticut, New Jersey, and New York.[1] The handful of slaves which existed there—they are supposed to have been about 50,000 in 1790—died out: the tide of emigration from Europe poured, slowly at first, but with increasing volume, through the Northern ports, spread over the seaboard States, and rolled westwards; and a vast population grew up, of more than average intelligence, passionately fond of freedom, keenly sensitive to opinion, and impatient of anything like national discredit. A strong hostility to slavery always existed in the North and West, though it did not, till a comparatively recent date, become an active element in the politics of the Union. On the reasons which prevented this I need not dwell; it is enough to say that, so long as slavery remained a mere matter of State legislation, it was practically shut out from the arena of political controversy. The Constitution, by giving Congress no control over it, placed it beyond the reach of interference, and no attempt to meddle with it unconstitutionally would have been countenanced by public opinion. Questions might, however, arise, strictly within the domain of Congress, which, without directly jeopardizing the institution itself, might embroil the interests of the Slave States with those of the Free, and widen the chasm between them. Three such questions arose, of very unequal importance—one relating to the admission of new States and the organization of Territories, a second to the recovery of fugitive slaves, and a third to the commercial policy of the Union.

I. To understand the magnitude of the first of these questions, and the frequency with which it was liable to

[1] Slavery in New York finally ceased in 1827, under the operation of an Act passed in 1817. This Act set free 10,000 slaves. A gradual Emancipation Act had been passed as early as 1799. At the date of the Census of 1840 there were still 674 slaves in New Jersey, which had passed an Act in 1804.—Greeley's *American Conflict*, p. 108.

Negro slaves existed in Massachusetts as early as 1638.—Curtis, *History of the Constitution of the United States*, vol. ii, p. 454.

recur, we have only to glance at any old map of the United States side by side with a map of the present day. The American Republic at its formation occupied but a narrow strip of its present wide dominion. Of the chain of States which now divide the valley of the Mississippi, and of those which border the lakes west of Lake Erie, not one was then in existence. Between the left bank of the river and the present confines of Virginia, the Carolinas, and Georgia, lay a great expanse of wild land, thinly settled here and there, and roamed over by the Creek and Cherokee Indians. This now forms the States of Alabama, Mississippi, Kentucky, and Tennessee. West of the great stream, from its sources to its mouth, and from its banks as far at least as the chain of the Rocky Mountains, and embracing also the seaboard between New Orleans and Mobile, extended the old French dominion of Louisiana, then a dependency of Spain, and uninhabited except at a few points where small settlements had been formed. West Florida, Texas, and the whole range of plain and highland stretching from the Gulf of Mexico to the Pacific, were also Spanish. Oregon was an unexplored wilderness. All these immense regions have by degrees been organised as Territories, and from Territories erected into States; each step has called into action the powers of Congress; and the question whether slavery should be admitted into, or excluded from, section after section of this new domain, has given rise to repeated and violent struggles. It has been insisted, on the one hand, that the soil of the Territories, being held by the common Government of the Union in trust for all the States, must be deemed common ground, in which all the States had equal rights; that all citizens indiscriminately had the right of settling there; that the right to settle was incomplete unless the settler could carry his property along with him; that Congress had by the Constitution no power to exclude from the Territories any species of property; that no such power could be

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ascribed to Territorial Legislatures, which are subordinate and temporary; and that slaves were a species of property. The conclusion from these premises was, that slavery ought to be recognised and protected by law in all the Territories up to the moment at which they were converted into States. The most determined adversaries of this view arrived, by a different course of reasoning, at a diametrically opposite conclusion. Freedom, they said, was, according to the principles of the Constitution, the normal condition of the Territories; slavery had and could have no legal existence there, being a status created entirely by the local laws of some particular States; and, where it did not exist, Congress had no power to permit or uphold it, nor, of course, had any Territorial Legislature. These conflicting views, the former of which was affirmed by the Supreme Court of the United States in the *Dred Scott* case,[1] were not distinctly asserted in the earlier stages of the contest; but on each recurrence of

[1] "The United States, under its present Constitution, cannot acquire territory to be held as a colony to be gverned at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a territory until it has a population which, in the judgment of Congress, entitles it to be admitted as a State of the Union. During the time it remains a territory Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States, and may establish a Territorial Government; and the form of this local Government must be regulated by the discretion of Congress, but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States, in respect to their rights of persons or rights of property. The territory thus acquired is acquired by the people of the United States for their common and equal benefit; and every citizen has a right to take with him into the territory any article of property, including his slaves, which the Constitution recognizes as property, and pledges the Federal Government for its protection."—*Dred Scott* v. *Sandford*, Howard's R., xix, 395.

The clause of the Constitution on which the question turned is Art. IV, § iii, 1, 2, "New States may be admitted by the Congress into this Union. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States."

the question they were advanced with greater sharpness and precision. Four times it became formidable; each time—the last perhaps excepted—it was composed by an arrangement which had more or less the character of a compromise. The Ordinance passed on the 13th June, 1787, by the Congress of the Confederation, for regulating the government of the waste lands then called the North-Western Territory, now forming Ohio, Indiana, Illinois, Michigan, and Wisconsin, prohibited slavery within that region; but it provided, in terms nearly the same as the general clause which was afterwards embodied in the Constitution (Art. IV, sec. ii, 3) that should any person escape into the same "from whom labour or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid."[1] The Missouri Compromise, in 1820, extended the same prohibition, guarded by the same proviso, to so much of the tract between the Mississippi and the Rocky Mountains (then called the Missouri Territory)

[1] This question was twice dealt with by the Continental Congress—in 1784, when an Ordinance was adopted extending in terms over the whole unoccupied territory above the 31st parallel north latitude, and including tracts not at that time ceded by North Carolina and Georgia, which now form the States of Alabama, Mississippi, and Tennessee, and again in 1787. The Ordinance of 1784, as drawn by the Committee of Congress, of which Jefferson was the principal member, contained the following clause:—

"That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes whereof the party shall have been duly convicted to have been personally guilty."

"The votes in Congress," says Mr. Greeley, "were 16 for Mr. Jefferson's interdiction of slavery to 7 against it, and the States stood recorded 6 for it to 3 against it; but the Articles of Confederation required an affirmative vote of a majority of all the States to sustain a proposition, and thus the restriction failed through the absence of a member from New Jersey, rendering the vote of that State null for want of a quorum." In the Ordinance of 1787 the clause was inserted, but with the addition mentioned in the text. This Ordinance was adopted and re-enacted, with the clause unaltered, by the first Congress of the Union in 1789.

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as lay to the north of the parallel of 36° 30′ north latitude—in other words, above a prolongation of the line which divides Virginia and Kentucky from South Carolina and Tennessee, excluding, however, the new State of Missouri itself, which lies altogether north of the line and indeed extends nearly to the latitude of New York. But the annexation of Texas, and the acquisition, by the Oregon Treaty with Great Britain and by conquest and purchase from Mexico, of the whole region west of the Rocky Mountains, caused the struggle to be again and again renewed; and the adoption, in 1850, of Mr. Clay's suggestion that the settlers in New Mexico and Utah should be permitted to choose for themselves between the admission and the prohibition of slavery, coupled, as it was, with the enactment of a very stringent Fugitive Slave Law, shook, if it did not displace, the precarious fabric of the Missouri Compromise. That arrangement was completely overthrown in 1854, when a part of the district which it embraced came before Congress for organization into two new Territories. The Compromise, after an obstinate struggle, was formally declared inoperative and void, the prohibition was cancelled, and the same option which Clay's Act had given to New Mexico and Utah was extended to Kansas and Nebraska.

In this long warfare the final advantage rested with the South. If a line be drawn from Delaware Bay to the Ohio, and along the course of that river to its confluence with the Mississippi, ascending the Mississippi and Missouri as far as the northernmost limit of Iowa, thence carried to the crest of the Rocky Mountains, and beyond them to the boundary of California, we shall see that the whole dominion of the Republic south of that line was either occupied by Slave States or by express declaration thrown open to slavery should the inhabitants think fit. Indeed, the decision in the *Dred Scott* case had virtually rivetted the institution on all the Territories

of the Union so long as they should remain in the condition of Territories.

Yet the apparent magnitude of these successive conquests far exceeded their real value. Throughout the vast tracts of land which had been the chief subjects of dispute, there was but little on which slave-labour could be profitably employed; and though, in the neighbourhood of the planting States, negroes might be bred for sale, this had its geographical limits, which were soon reached. In West Virginia and those counties of Kentucky which border on the Ohio, slaves were few. Kansas, after a desperate internal struggle, finally organized herself as a free-labour State; and the adoption of Clay's Compromise in respect of New Mexico was advocated by Mr. Webster on the express ground that the character of the country, composed of high barren mountains and deep valleys with some narrow strips of river land rendered cultivable only by irrigation, made it impossible that slavery should ever flourish there. In fact, although the Legislature of New Mexico passed in 1859 very stringent laws for the protection of slave property, there were at the date of the Census of 1860 no slaves within that Territory. In Utah there were 29, in Nebraska 15, in Kansas 2, in Nevada, Washington, Colorado, and Dakota none.[1] It was clear also that, whilst these victories, such as they were, promised little in the way of

[1] "Mr. Seward made another speech in the Senate on the 2nd instant. He expressed perfect confidence that the Union would be preserved (he would not admit that it was already impaired and required to be restored), and he pointed out with considerable effect the unpractical character of the question which is nominally at all events the cause of the dispute. This question is that of the 'territories' of the United States. What, Mr. Seward asked, is the extent of the territories which remain after the admission of California, of Oregon, of Kansas? 1,063,307 square miles, an area twenty-four times that of the State of New York, the largest of the old and fully developed States. How many slaves are there in it? How many have been brought into it during the twelve years in which it has been not only relinquished to slavery, but in which the Supreme Court and the Legislature and the Administration have

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profit, not much more was to be expected from them in the way of political power. Wherever slavery proved unprofitable, the interests and influence of the white population must in the long run add their weight to the other scale. To retard this process might be possible, but not to arrest or reverse it. Outnumbered decisively and irrevocably in the House of Representatives, which is elected on the basis of population, the South struggled to keep its hold on the Senate, which is elected by States. The admission of Free and Slave States to the Union went on for a considerable time nearly at an even pace, and it was this which gave such extraordinary keenness to the contest for Missouri, Kansas, and the Valley of the Platte. But the endeavour to cut new Slave States out of countries in which slavery could not strike root was destined to fail; the balance, long preserved, was at length destroyed, and the future offered no prospect of its restoration.[1]

Meanwhile the struggle itself, its many vicissitudes, the heat and pertinacity with which it was carried on, the violences of speech and action by which it was occasionally sullied even within the walls of Congress, were gradually dividing the nation into hostile camps and embittering

maintained, protected, defended, and guaranteed slavery there? Twenty-four African slaves—one slave for every 24,000 square miles."—*Lord Lyons to Lord John Russell*, 4th February, 1861.

"It is true," says Mr. Pollard, speaking of the interest which the South had in passing the Act which cancelled the Missouri Compromise, "it is true that her Representatives in Congress were well aware that under the operation of the new Act their constituents could expect to obtain but little, if any, new accessions of Slave territory; while the North would necessarily, from the force of circumstances, secure a number of new States in the North-West, then the present direction of our new settlements. But, viewed as an act of proscription against her, the Missouri Compromise was justly offensive to the South, and its abrogation in this respect strongly recommended itself to her support."—Pollard's *Southern History of the War*, Richmond, 1862 (reprinted at New York, 1863), p. 20.

[1] The progressive increase in the representation of the Free States in

the feelings of each towards the other. The battle fought between the two contending principles in Kansas, as in an arena, under the eyes of the whole Union—a contest in which each party held its own Conventions, framed its own Constitution, and shot down its adversaries without scruple or remorse—contributed powerfully to inflame these feelings. The people of the North learnt to regard slavery as an aggressive power, which it was necessary to combat, restrain, subdue. They saw that, condemned elsewhere by law and opinion, and hardly keeping a precarious foothold in one or two countries, not the foremost in the march of civilization, it had

Congress, and the dates at which Free and Slave States were respectively admitted into the Union, are shown in the subjoined Tables:—

NUMBER of Representatives in Congress assigned to each of the States, from 1790 to 1850.

FREE STATES.

STATES. With Date of Admission into the Union.	1790.	1800.	1810.	1820.	1830.	1840.	1850.
1787.							
1. New York	10	17	27	34	40	34	33
2. Pennsylvania	13	18	23	26	28	24	25
3. Massachusetts	14	17	20	13	12	10	11
4. Connecticut	7	7	7	6	6	4	4
5. New Hampshire.. ..	4	5	6	6	5	4	3
6. New Jersey	5	6	6	6	6	5	5
7. Rhode Island	2	2	2	2	2	2	2
1791.							
8. Vermont	2	4	6	5	5	4	3
1802.							
9. Ohio	..	1	6	14	19	21	21
1816.							
10. Indiana.	..	..	1	3	7	10	11
1818.							
11. Illinois	..	..	..	1	3	7	9
1820.							
12. Maine..	..	..	..	7	8	7	6
1837.							
13. Michigan	..	..	..	..	1	3	4
1846.							
14. Iowa	..	..	..	..	..	..	2
1848.							
15. Wisconsin	..	..	..	..	..	..	3
1850.							
16. California	..	..	..	..	..	..	2
	57	77	104	123	142	135	144

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fixed its empire within the United States, was working steadily to extend that empire, and aimed at nothing less than to stamp on the Republic for ever the character of a great Slave Power. Attention was directed to its economical results; its influence on the growth of wealth and population began to be rudely canvassed, and its value as an instrument of production was exposed to searching inquiry. The abolitionist agitation, which had not before been formidable, gained strength, and a great party arose, which, not unanimous on all other points, acknowledged as its common principle the duty of resisting, at all costs, the further extension of slavery.

"The United States," Mr. Seward declared, in 1858, "must and will, sooner or later, become entirely a

(*Note continued from page* 21.)

SLAVE STATES.

States. With Date of Admission into the Union.	1790.	1800.	1810.	1820.	1830.	1840.	1850.
1787.							
1. Virginia	19	22	23	22	21	15	13
2. Maryland	8	9	9	9	8	6	6
3. Delaware	1	1	2	1	1	1	1
4. North Carolina	10	12	13	13	13	9	8
5. South Carolina	6	8	9	9	9	7	6
6. Georgia.	2	4	6	7	9	8	8
1792.							
7. Kentucky	2	6	10	12	13	10	10
1796.							
8. Tennessee	1	3	6	9	13	11	10
1812.							
9. Louisiana	..	..	1	3	3	4	4
1817.							
10. Mississippi	..	..	..	1	2	4	5
1819.							
11. Alabama	..	..	..	3	5	7	7
1821.							
12. Missouri	..	..	..	1	2	5	7
1836.							
13. Arkansas	..	..	..	..	1	1	2
1845.							
14. Florida.	..	..	..	..	..	..	1
15. Texas	..	..	..	..	..	..	2
	49	65	79	90	100	88	90

slave-holding nation or entirely a free-labour nation."[1] "We shall help," cried Mr. Sumner of Massachusetts, "to expel the slave oligarchy from all its seats of national power and drive it back within the States. Prostrated, exposed, and permanently expelled from ill-gotten power, the oligarchy will soon cease to exist as a political combination. Its final doom may be postponed, but it is certain. . . . . In its retreat, smarting under the indignation of an aroused people and the concurring judgment of the civilized world, it must die—it may be as a poisoned rat dies, of rage in its hole. Meanwhile all good omens are ours. The work cannot stop. Quickened by the

[1] "Our country is a theatre which exhibits in full operation two radically different political systems, the one resting on the basis of servile or slave labour, the other on the basis of voluntary labour of freemen. The two systems are at once perceived to be incongruous. Both never have permanently existed together in one country, and they never can. . . . . Hitherto the systems have existed in different States, but side by side within the American Union. This has happened because the Union is a Confederation of States. But in another aspect the United States constitutes only one nation. Increase of population, which is filling the States out to their very borders, together with a new and extended network of railroad and other avenues, and an internal commerce which daily becomes more intimate, is rapidly bringing the States into a higher and more perfect social unity or consolidation. Thus these antagonistic systems are continually coming into closer contact, and collision ensues. Shall I tell you what this collision means? It is an irrepressible conflict between opposing and enduring forces, and it means that the United States must and will sooner or later become entirely a slave-holding nation, or entirely a free-labour nation. Either the cotton and rice fields of South Carolina and the sugar plantations of Louisiana will ultimately be tilled by free labour, and Charleston and New Orleans become marts for legitimate merchandize alone, or else the rye-fields and wheat-fields of Massachusetts and New York must again be surrendered by their farmers to the slave culture and to the production of slaves, and Boston and New York become once more markets for trade in the bodies and souls of men. It is the failure to apprehend this great truth that induces so many unsuccessful attempts at final compromise between the Slave and Free States, and it is the existence of this great fact that renders all such pretended compromises, when made, vain and ephemeral."—Speech at Rochester, New York, October 25, 1858.

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triumph now at hand, with a Republican President in power, State after State, quitting the condition of a Territory, and spurning slavery, will be welcomed into our plural unit, and, joining hands together, will become a belt of fire about the Slave States, in which slavery must die." "I believe," said the sober judgment of the man who afterwards became President of the United States, "this Government cannot permanently endure half slave and half free. I do not expect the Union to be dissolved. I do not expect the house to fall, but I do expect that it will cease to be divided. It will become all one thing, or all the other. Either the opponents of slavery will arrest the further spread of it and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward till it shall become alike lawful in all the States, old as well as new, North as well as South."[1]

In the South itself the contest had not failed to produce its natural effects. It had strengthened powerfully throughout the Slave States the common tie of sectional interest and feeling; it had accustomed them to regard the Free States as opponents, if not as enemies; and the counter-movement in the North, as it advanced, awoke in the Southern people, high-spirited, hasty, and sensitive, as we have seen, from the character of their institutions, to the least approach of danger, the liveliest emotions of anger and alarm—a state of mind more prone than any other to precipitation and less accessible to reason. The tendencies of Northern opinion were exaggerated; slavery itself, no longer defended as a necessary evil, was eulogised with almost fantastic extravagance. The journals were filled with violent abuse of everything Northern; and two old grievances—the imperfect execution of the laws providing for the sur-

[1] Mr. Lincoln's Speech at Springfield, Illinois, June 17, 1858.

render of runaway slaves, and the injustice of a protective tariff, were insisted on with new and redoubled vehemence. Chap. I.

II. The Constitution of the Union, framed at a time when slavery had ceased in one at least of the Thirteen States, and was in process of extinction in others, regarded the relation of master and slave as what it was in fact—a local institution—the creature of local laws, existing where those laws had force, and not existing elsewhere. It contains, however, the following clause, introduced at the instance of South Carolina shortly before the Convention concluded its labours:—

"No person held to service or labour in one State under the law thereof, escaping into another, shall in consequence of any law or regulation therein be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due."

An account of the insertion of this clause and a defence of it may be read in Mr. Curtis's *History of the Constitution of the United States.*[1] "It was regarded at the time," observes that lucid and careful writer, "by the Southern States as absolutely necessary to secure to them their right of exclusive control over the question of emancipation; and it was adopted in the Convention by unanimous consent, for the express purpose of protecting a right that would otherwise have been without satisfactory security."

It was held by the Supreme Court that the power and duty created by this clause belong exclusively to the Government of the United States, and that Congress alone could legislate on the subject; that Congress itself could not exact from the several States any service which they were unwilling to perform; and that laws made by the States to prevent, or even to assist, the arrest and recovery of fugitive slaves were unconstitutional and void.[2] This

[1] Book iv, chap. xv.

[2] *Prigg* v. *Commonwealth of Pennsylvania*, Peters's R. xvi, 539, 622. The judgment of the Supreme Court was pronounced by Mr. Justice Story.

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decision, though it had been sometimes disapproved, continued to be law.

For the purpose of giving effect to the clause, two Acts had been passed, divided by a long interval of time—the first in 1793, the second (drawn by Mr. Mason of Virginia, and supported by Mr. Webster, and adopted as one of the series of measures known as Mr. Clay's Compromise) in 1850.

The general purport of these Acts was to authorize in every case the claimant of an alleged fugitive to seize and remove him to the State from whence he came. Authority to remove was obtained from a Judge of a Circuit or District Court of the United States, or (under Mr. Mason's Act) from a Commissioner chosen by the claimant out of a certain number holding their appointments under the Circuit Courts. All the necessary evidence might, under that Act, be given either by depositions or by affidavit at the option of the claimant; the Commissioner's fee was 10 dollars if he granted the authority, 5 dollars if he refused it; he might issue to any person whom he thought fit a warrant for the arrest of the alleged fugitive, and the holder of the warrant was entitled to summon the *posse comitatûs* to aid in executing it.

These provisions, which appear plainly designed to make slave-catching in the Free States a business profitable to petty officials and such private persons as chose to engage in it, had at first the effect intended; but in achieving their ulterior object, in rendering an obnoxious law independent of that support which all laws derive from public sentiment and enabling it to make head against an adverse current of opinion, they failed, as it was inevitable that they should. Their very rigour, and the tragical incidents which sometimes attended the execution by peace-officers of what a Judge of the Supreme Court[1] did not scruple to call

[1] Mr. Justice Grier. Greeley's *American Conflict*, p. 217.

"a most dangerous and disgusting duty," exasperated popular feeling against the law itself, and helped to defeat its purpose. But for this the Federal Government was not to blame. A law which the bulk of the community believe to be immoral and detest as inhuman can be enforced by nothing short of despotic and overwhelming power; and this is eminently true where, as in the case of slave-catching, the detection, pursuit, seizure, and removal of the runaway—in a word, the whole process from beginning to end—is liable to be thwarted in a hundred ways without open resistance. These obstacles were augmented, indeed, in many of the Free States by State enactments, framed to make the execution of the Act as difficult and troublesome as possible, and to deter persons from taking part in it—enactments which were commonly and justly regarded as unconstitutional.[1] The real loss, however, sustained by the Slave States from these causes does not appear to have been considerable; and of this but little was probably due to the action of the State Legislatures, none to the Federal Congress. All that the latter could do, and more than it ought to have done, it did.[2]

[1] There is a summary of these laws in the *American Annual Cyclopædia* for 1861, under the heading "Personal Liberty Laws."

[2] During the discussions of the "Peace Conference" in 1861, the present Chief Justice of the Supreme Court spoke as follows on this subject (February 26th):—

"Aside from the Territorial question—the question of Slavery outside of Slave States—I know of but one serious difficulty. I refer to the question concerning fugitives from service. The clause in the Constitution concerning this class of persons is regarded by almost all men, North and South, as a stipulation for the surrender to their masters of slaves escaping into Free States. The people of the Free States, however, who believe that slave-holding is wrong, cannot and will not aid in reclamation, and the stipulation becomes therefore a dead letter. You complain of bad faith; and the complaint is retorted by denunciations of the cruelty which would drag back to bondage the poor slave who has escaped from it. You, thinking slavery right, claim the fulfilment of the stipulation; we, thinking slavery wrong, cannot fulfil the stipulation without consciousness of participation in wrong. Here is a real diffi-

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III. On the score of the Tariff the South had two complaints to urge, which should be kept distinct from one another. The Congress of the United States is by the Constitution prohibited from imposing export duties, but it has authority to tax imports, provided the taxation be uniform and no preference be given by any regulation of commerce or revenue to the ports of one

culty; but it seems to me not insuperable. It will not do for us to say to you, in justification of non-performance, 'The stipulation is immoral, and therefore we cannot execute it;' for you deny the immorality, and we cannot assume to judge for you. On the other hand, you ought not to exact from us the literal performance of the stipulation when you know that we cannot perform it without conscious culpability. A true solution of the difficulty seems to be attainable by regarding it as a simple case where a contract, from changed circumstances, cannot be fulfilled exactly as made. A court of equity in such a case decrees execution as near as may be. It requires the party who cannot perform to make a compensation for non-performance. Why cannot the same principle be applied to the rendition of fugitives from service? We cannot surrender—but we can compensate. Why not, then, avoid all difficulties on all sides, and show respectively good faith and good will, by providing and accepting compensation where masters reclaim escaping servants and prove their right of reclamation under the Constitution? Instead of a judgment for rendition, let there be a judgment for compensation, determined by the true value of the services, and let the same judgment assure freedom to the fugitive. The cost to the National Treasury would be as nothing in comparison with the evils of discord and strife. All parties would be gainers."—Chittenden's *Debates and Proceedings of the Peace Conference*, p. 430.

On the amount of the loss suffered by escapes the following passage occurs in the Introduction to the American Census Returns of 1860:—

"The number of slaves who escaped from their masters in 1860 is not only much less in proportion than in 1850, but greatly reduced numerically. The greatest increase of escapes appears to have occurred in Mississippi, Missouri, and Virginia, while the decrease is most marked in Delaware, Georgia, Louisiana, Maryland, and Tennessee.

"That the complaint of insecurity to slave property by the escape of this class of persons into the Free States, and their recovery impeded, whereby its value has been lessened, is the result of misapprehension, is evident not only from the small number who have been lost to their owners, but from the fact that up to the present time the number of escapes has been gradually diminishing to such an extent that the whole annual loss to the Southern States, from this cause, bears less proportion

State over those of another. It had been the uniform practice, in exercise of this power, to raise by import duties nearly the whole (I believe, about seven-eighths) of the supplies necessary for the public expenditure of the Union, leaving the State Governments to provide for their public expenditure by direct taxation. This practice, it was alleged, was disadvantageous not so much

to the amount of capital involved, than the daily variations which in ordinary times occur in the fluctuations of State or Government securities in the city of New York alone.

"From the tables annexed, it appears that while there escaped from their masters 1,011 slaves in 1850, or one in each 3,165 held in bondage (being about $\frac{1}{3}\frac{1}{0}$th of 1 per cent), during the census year ending June 1, 1860, out of 3,949,557 slaves, there escaped only 803, being 1 to about 5,000, or at the rate of $\frac{1}{5}\frac{1}{0}$th of 1 per cent. Small and inconsiderable as this number appears, it is not pretended that all missing in the Border States, much less any considerable number escaping from their owners in the more Southern regions, escaped into the Free States; and when we consider that, in the Border States, not 500 escaped out of more than 1,000,000 slaves in 1860, while near 600 escaped in 1850 out of 910,000, and that at the two periods near 800 are reported to have escaped from the more Southern slave-holding States, the fact becomes evident that the escape of this class of persons, while rapidly decreasing in ratio in the Border Slave States, occurs independent of proximity to a free population, being, in the nature of things, incident to the relation of master and slave.

"It will scarcely be alleged that these returns are not reliable, being, as they are, made by the persons directly interested, who would be no more likely to err in the number lost than in those retained. Fortunately, however, other means exist of proving the correctness of the results ascertained, by noting the increase of the free coloured population, which, with all its artificial accretions, is proven by the census to be less than 13 per cent. in the last ten years in the Free States, whereas the slaves have increased $23\frac{1}{2}$ per cent., presenting a natural augmentation altogether conclusive against much loss by escapes; the natural increase being equal to that of the most favoured nations, irrespective of immigration, and greater than that of any country in Europe for the same period, and this in spite of the 20,000 manumissions which are believed to have occurred in the past ten years. An additional evidence of the slave population having been attended from year to year, up to the present time, with fewer vicissitudes, is further furnished by the fact that the free coloured population, which from 1820 to 1830 increased at the rate of $36\frac{1}{5}$ per cent., in 1840 exhibited but $20\frac{4}{5}$ per cent. increase, gradually declining to 1860, when the increase throughout the United States was but 1 per cent. per annum."

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to the consumer of the imported goods as to the producer of the exports which paid for them. These consisted chiefly of raw products, while the imports were chiefly manufactured goods; and of the former the great bulk had until recently come from the South, the official returns for 1840 giving to the South in round numbers 78,000,000 dollars (of which more than 61,000,000 dollars represented raw cotton), to the West 18,000,000 dollars, and to the East somewhat less than 5,400,000 dollars.[1] Immigration, the extension of the Western railways, with the abolition of protective duties in England, and the generally increased demand for food in Europe, had indeed, within the twenty years ensuing, tripled the exports from the West: they stood in 1860 at 61,000,000 dollars in round numbers, and those of the East at 26,000,000 dollars, but the South exported in that year not less than 229,000,000 dollars. The South then, it was urged, in this way alone paid more than her share of the general charges of the Union. But the tariff, it was added—and on this the chief stress was laid—had been made to serve, not only for revenue, but for protection; and the Southerners complained, with justice, that they were compelled to pay higher prices for all the things they wanted most, in order that the mill-owners and iron-masters of the Northern and Middle States might be enabled to manufacture goods at a profit. To this it was answered, as it has often been answered elsewhere, that the encouragement of native industry was for the benefit of the whole nation, and that those who had to pay for it ought to resign themselves to the sacrifice. The controversy is one with which we are familiar, and it had in America no special character beyond what it owed to its connection with the slavery question, to the peculiar structure of the Union, and the local distribution of the great branches of industry.

[1] *American Annual Cyclopædia* for 1861, p. 100.

The tariff underwent in fact ten or twelve changes during the forty years preceding 1860, not in one uniform direction, the planting and maritime States fighting against the protective system with varying success, and not with uniform consistency. In 1832 the total revenue from import duties had risen to nearly 50 per cent. of the aggregate value of the goods subject to duty; and it was in that year that South Carolina broke into open resistance, which was partly overcome by the resolute firmness of President Jackson, partly bought off by the large prospective reductions made in the Compromise Tariff of Mr. Clay. The scale had been raised in 1842; lowered, on the whole, in 1846, when the *ad valorem* principle was made general; and lowered again considerably in 1857. The duties, however, on iron, woollen, and manufactured cotton goods, though not so high as formerly, were still protective. Sugar was protected for the benefit of Louisiana, as iron was for that of Pennsylvania, lead for Missouri, and hemp for Kentucky. Tea and coffee had long been admitted duty free. Of the changes made by the Morrill Tariff I do not speak; they did not become law until after the Secession, and have therefore no place among its causes or its apologies.[1]

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[1] In the foregoing account of the grievances of the South, and of the state of feeling there, I have relied on speeches delivered by prominent Southerners in Congress and elsewhere before the Secession, and on the manifestoes published afterwards.

CHAPTER II.

Parties in the United States.—The Disorganizing Influence of the Slavery Question.—Elections to the Presidency from 1848 to 1860 —Election of President Lincoln.—Constitutional and Moral Aspects of "Secession."

In America, as in England, that lower form of public spirit which we call the spirit of party—low sometimes to the verge of baseness, but useful as an antidote to mere selfishness, laziness, and indecision, and as an engine for working out great political aims—has never been wanting; and there, as here, the need for the stimulant has been strengthened by habit. The general cleavage, if I may so say, of party organization has been determined by the structure of the Republic itself, which in its earlier form was a mere federation or perpetual league of independent communities, and still has imbedded in it a substantial element of federalism. Under such a Constitution, wherever it exists, there will always be persons inclined to strengthen the General Government, and side with it against the Local Governments as often as the limits of its authority are in question, and other persons whom feeling or opinion lead the opposite way. Two parties, therefore, have always divided the American commonwealth; they were in existence, indeed, before the Constitution was framed, and it was shaped by their opposing influences. The great States of Virginia, Pennsylvania, and Massachusetts, with the Carolinas and Georgia, then formed the Union party, which was kept in check by a minority possessing less than half their population and not a

fourth of their area, and composed of New York, New Jersey, Connecticut, Maryland, and Delaware. They have at different times borne various names, more or less arbitrarily chosen, and only expressing, as it seems, the pretensions of each to be the true representatives of the founders of the commonwealth; the Democrats were once Republicans; the Republicans of to-day are successors of the Whigs, who had originally called themselves Federalists. But these parties, each carefully disciplined, and exercised, by the recurrence of elections of all kinds at very short intervals, in frequent trials of strength, have not in reality had much to fight about beyond the disposal of offices and emoluments; for the Constitution, working with a smoothness which does honour to the sagacity of its framers, has given rise in practice to few questions on which they could directly disagree. They have thrown their strength, therefore, into other questions, often local and temporary; and they have been themselves split and traversed irregularly by subdivisions, which perplex the observer by their number and apparent capriciousness. To these circumstances—to a political activity which, healthy and bracing as it is, may be called excessive compared with the objects on which it spends itself—and to the vastness of the field over which every great canvass must extend, the reproach of shiftiness, which Americans themselves are apt to level at their foremost politicians, is probably due. At every election to the President's chair many different interests have to be gained, and jarring opinions harmonized by judicious management; new "platforms," or confessions of faith, have to be constructed; and the "planking" of these fabrics—that is, the choice and arrangement of the party tenets to be insisted on—is often a pattern of ingenuity and skill.

The Democratic party, which soon came to have its chief seat in the Southern States, but had a large organization everywhere and was especially strong in

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New York, has usually been the more powerful of the two. Its creed was the more popular; in the foreign politics of the Union it took the more forward part; and it has been the constant champion of annexations, which are always popular. It had sided on the whole steadily enough with the South, had opposed the claim advanced on behalf of Congress to prohibit slavery in the Territories, and been warmly hostile to Abolitionism, following in these respects the bias impressed on it by its cardinal tenet, but yielding also to its party attachments and its anxiety to secure the Southern vote for party ends.

As for the Whigs, they had undergone frequent and severe reverses. More than once they had been utterly disorganized. They had resisted the extension of slavery, but not with unwavering firmness, disliking it as a body, but caring above all things for the strength and stability of the Union. Their greatest orator, Daniel Webster, had late in life employed his splendid eloquence in advocating the Compromise of 1850, and had strenuously urged the duty of enforcing with alacrity the Fugitive Slave Law. Although the strength of the party lay in the North and West, it had many adherents in the South. Their aid had carried the election of Harrison and Tyler in 1840, and of General Taylor in 1848; and Harrison, a Virginian born though resident in the North, had, as Governor of the Indiana Territory, supported the petition of the earlier settlers to be allowed to import slaves into that region. Taylor, a Louisiana man and himself a slaveholder, had earned his popularity by driving the Mexicans out of Texas and winning a new dominion for slavery.

Long before 1860, the advance of the slavery question, its growing magnitude and trenchant edge, had begun to threaten the demolition of both the great parties. At the election of 1848, a considerable body of Whigs and Democrats deserted their respective flags and appeared in the field under the name of Free-soilers,

with candidates of their own. At Mr. Pierce's election in 1852, the Free-soil vote sunk from 291,342 to 155,825; most of the seceding Democrats had been induced to return to their standard, and among the managers of the Whig party the predominant feeling was anxiety for peace. But in 1856 a great change had come. It had been discovered that the Compromise measures of 1850, the maintenance of which had formed a "plank" in the Whig platform of 1852, were regarded by the Slave States as having cancelled the older Compromise of 1820. The struggle for Kansas and Nebraska had begun; and in the spring of the year an insulting speech, as it was thought, delivered by a prominent Free-soiler, Mr. Sumner, had been resented by a violent assault within the walls of the Senate. The Whig party broke and disappeared; a large fragment joined the Free-soilers and chose the title of Republicans; the remainder clung still to a middle course, endeavoured to put the question of slavery aside, and called themselves "Americans," to denote that they had no political creed beyond the duty of upholding the laws and Constitution of the Union. This insured the success of the Democrat, but it did not escape observation that the votes recorded for the Republican and American candidates exceeded in the aggregate those given to Buchanan. During his term of office, several circumstances contributed to quicken the movement of opinion. The judgment of the Supreme Court in the case of Dred Scott was delivered immediately after the accession of the new President. It ruled, first, that Congress had no power to prohibit slavery in the Territories; secondly, that no coloured person of slave descent was or ever could be an American citizen, or entitled to sue as such in the Courts of the United States. The Constitution seemed to require amendment, if this was indeed a true interpretation of the Constitution. The petty civil war waged in Kansas betweeen the Free-soil settlers and the pioneers of slavery from Missouri did

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more, perhaps, than any other cause to chafe the tempers of both North and South, and render the breach irreconcilable. In October 1859, a daring enthusiast who had fought in Kansas, and who, had he lived three years longer, would probably have made himself famous by the union of austere piety with the skill and dash of a partizan leader, made a desperate attempt to free and arm the slaves in North Virginia, and actually succeeded in surprising, with a little handful of devoted adherents, the Federal arsenal at Harper's Ferry.

As Mr. Buchanan's term drew to a close, it became apparent that at the next election an issue never distinctly raised before would be presented to the country; that this issue would be sharp and clear; and that it could hardly fail to complete the ruin of the old party organization. When in April and May 1860 the party conventions met, according to custom, to construct their respective platforms and choose their candidates, these anticipations were realized. The Republicans and "Americans" raised their former flags, the latter discarding their title for a more expressive one, and calling themselves the party of "Constitutional Union." But the Democrats now broke, as the Whigs had previously done, into two sections, the more moderate of which, including all the delegates of Free States, except those from California and Oregon, was content to affirm these two principles:—

"That the Democratic party will abide by the decisions of the Supreme Court of the United States on the questions of Constitutional Law;

"That it is the duty of the United States to afford ample and complete protection to all its citizens, whether at home or abroad, and whether native or foreign."[1]

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[1] "Minority Report" adopted by the Charleston Democratic Convention, Resolutions 2 and 3.

By the more advanced it was insisted—

"1st. That the Government of a Territory organized by an Act of Congress is provisional and temporary; and, during its existence, all citizens of the United States have an equal right to settle with their property in the Territory without their rights, either of person or property, being destroyed or impaired by congressional or territorial legislation.

"2nd. That it is the duty of the Federal Government, in all its departments, to protect, when necessary, the rights of persons and property in the Territories, and wherever else its constitutional authority extends.

"3rd. That when the settlers in a Territory having an adequate population form a State Constitution, the right of sovereignty commences, and, being consummated by admission into the Union, they stand on an equal footing with the people of other States; and the State thus organized ought to be admitted into the Federal Union, whether its constitution prohibits or recognizes the institution of slavery." [1]

Both joined in denouncing the "Personal Liberty Laws," and in recommending the acquisition of Cuba.

The range of disagreement between the extremes on both sides may be measured by comparing the resolutions last quoted with those adapted at Chicago by the Republican Convention on the same subject:—

"7. That the new dogma that the Constitution, of its own force, carries slavery into any or all of the Territories of the United States, is a dangerous political heresy, at variance with the explicit provisions of that instrument itself, with contemporaneous exposition, and with legislative and judicial precedent; is revolutionary in its tendency, and subversive of the peace and harmony of the country.

"8. That the normal condition of all the territory of the United States is that of Freedom. That, as our Republican fathers, when they had abolished Slavery in all our national territory, ordained that 'no person should be deprived of life, liberty, or property, without due process of law,' it becomes our duty, by legislation, whenever such legislation is necessary, to maintain this provision of the Constitution against all attempts to violate it; and we deny the authority of Congress, of a territorial legislature, or of any individuals, to give legal existence to slavery in any territory of the United States." [2]

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[1] "Majority Report" rejected by the Convention, Resolutions 1, 2, and 3.

[2] Resolutions 7 and 8.

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There were thus four parties in the field, whose views on the question practically chosen as the test of political orthodoxy may be shortly stated as follows:—

1. The Republicans, not content with affirming the moderate and reasonable propositions, that to exclude slavery from the Territories was within the power of Congress, and (subject to the supreme authority of Congress) within that of the Territorial Legislatures, and that the exercise of this power by Congress was expedient, went further, and maintained that slavery neither had nor could have legal existence in any Territory. The candidate of this party was Mr. Lincoln.

2. The "Seceding Democrats," as they were called, affirmed on the contrary that slavery had legal existence, under the Constitution, in every Territory; that the inhabitants, when formed into a State, could abolish it if they thought fit; but that it could be excluded in the meanwhile neither by the Territorial Legislature nor by Congress. The candidate of this party was Mr. Breckenridge, of Kentucky.

3. Another section of Democrats were understood to hold that it might be excluded by the Territorial Legislatures, but not by Congress. Their candidate was Mr. Douglas, of Illinois.[1]

4. A fourth party, declaring that experience had proved the mischievous effect of partisan platforms in misleading the people, and in widening party divisions and making them sectional, refused to recognize any other political principle than "the Constitution of the country, the Union of the States, and the enforcement of the laws." This party was represented by Mr. Bell, of Tennessee.

The more moderate politicians—the men of less

[1] This doctrine, commonly denoted by the phrases "Popular Sovereignty" and "Squatter Sovereignty," was not clearly expressed in the platform of the Charleston Convention, and is indeed hardly consistent with it; but it was the ground practically taken throughout the canvass.

absolute convictions or less unflinching resolution, by whom, in ordinary times, the action of parties is restrained and controlled—were in this way sifted off, and forced to mass themselves in separate bodies, whilst the two great opposing interests, each represented by its most thorough-going partizans, were brought face to face and foot to foot with one another.

About six months had yet to elapse before the day fixed by Congress for the choice of electors—a choice which virtually elects the President himself, since the electors are all pledged men, and their proceedings a mere formality. This interval was spent in a feverishly active canvass, in the course of which many fruitless endeavours were made to effect coalitions. On the 6th November, 1860, the vote was taken throughout the Union with the following result:—

NORTH AND WEST.

[These Tables are taken from Macpherson's *Political History of the Rebellion.*]

	Lincoln.	Breckenridge.	Douglas.	Bell.
California	39,173	34,334	38,516	6,817
Connecticut	43,792	14,641	15,522	3,291
Illinois	172,161	2,404	160,215	4,913
Indiana	139,033	12,295	115,509	5,306
Iowa	70,409	1,048	55,111	1,763
Maine	62,811	6,368	26,693	2,046
Massachusetts	106,533	5,939	34,372	22,331
Michigan	88,480	805	65,057	405
Minnesota	22,069	748	11,920	62
New Hampshire ..	37,519	2,112	25,881	441
New Jersey	58,324	—	62,801[1]	—
New York	362,646	—	312,510[1]	—
Ohio..	231,610	11,405	187,232	12,194
Oregon	5,270	5,006	3,951	183
Pennsylvania	268,030	178,871	16,765	12,776
Rhode Island	12,244	—	7,707[1]	—
Vermont	33,808	218	6,849	1,969
Wisconsin	86,110	888	65,021	161
Total	1,840,022	277,082	1,211,632	74,658

[1] In these States electors for Breckenridge, for Douglas, and for Bell, were combined in one ticket, and voted for in the lump by supporters of each of those candidates.

MIDDLE OR BORDER SLAVE STATES.

	Lincoln.	Breckenridge.	Douglas.	Bell.
Arkansas	..	28,732	5,227	20,094
Delaware	3,815	7,337	1,023	3,864
Maryland	2,294	42,482	5,966	41,760
Kentucky	1,364	53,143	25,651	66,058
Missouri	17,028	31,317	58,801	58,372
North Carolina ..	..	48,539	2,701	44,990
Tennessee	..	64,709	11,350	69,274
Virginia	1,929	74,323	16,290	74,681
Total	26,430	350,582	127,009	379,093

SOUTHERN OR COTTON STATES.

Alabama	..	48,831	13,651	27,875
Florida	..	8,543	367	5,437
Georgia	..	51,889	11,590	42,886
Louisiana	..	22,681	7,625	20,204
Mississippi	..	40,797	3,283	25,040
South Carolina[1] ..	..	No popular	Vote.	..
Texas	..	47,548	..	15,438
Total	..	220,289	36,516	136,880
Grand Total ..	1,866,452	847,953	1,375,157	590,631

Lincoln over Douglas	491,295
,, Breckenridge	1,018,499
,, Bell	1,275,821
Other Candidates over Lincoln	947,289

The events which immediately followed give importance to these figures. The candidate who had an overwhelming ascendancy in the North and West failed, as we see, to obtain a single vote in the Cotton States; the candidate who in those States occupied a corresponding position had an insignificant minority in the North and West. In the Middle or Border States the most powerful party was that of Constitutional Union. Here lay the strength of this party, which was feeble in the West and North, but in the Cotton States themselves mustered about half as many as the supporters of Breckenridge. Even in the Free States the two sections of the Democratic party, taken together, were to the Republicans in proportion of seven to nine, whilst in the whole Union

[1] The vote of this State, in which the electors are chosen by the Legislature, was cast for Breckenridge. This should be taken into account in a comparison of numbers.

they were as twelve to ten. Finally, Mr. Lincoln, though he headed the poll, had scarcely two-fifths of the votes recorded.

We have now followed the course of this great quarrel to the very brink of the Civil War. On the legal and moral aspects of it I shall permit myself only a very few words. To the Government of Great Britain and other European Governments, the war, when it came, came as a fact, which they could not help recognizing, but they had no part or concern in the discords out of which it sprang. They had been, and they continued to be, friends to the whole American people thus unhappily divided; and profound as was their interest in the future of the Republic, they rightly resolved to stand altogether aloof from the contest on which that future appeared to depend. Whether an aggrieved State had a right to secede from the Union, or whether the Southern States had grievances, they were not, as Governments, called upon to judge; remaining neutral, they had but to pursue the line of conduct traced out for neutral Powers by the law of nations.

By the South it was insisted that the Union was composed of States united on certain terms which are expressed in the Constitution; that a substantial violation of these terms would entitle any State to secede; and that they had been substantially violated. On the thesis embodied in the first and second of these propositions much has been written and said; but the controversy, like most attempts to discuss a grave question of conduct on high abstract grounds, was really barren and inconclusive, and the research spent upon it only made it appear more difficult than it really was. If the supposed right to secede be represented as a legal right, it is surely enough to ask whether, on an indictment for treason against the United States, a plea that, before the committing of the alleged treason, the State of which the

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accused was a citizen had for good cause seceded from the Union could under any circumstances have been a legal defence? It would have been impossible, I conceive, to state such a defence in any form in which it would have been legally admissible; and this is only another way of saying that secession, instead of being guaranteed by the law of the United States as a right, is absolutely prohibited by it as a crime. From a constitutional point of view it is only a particular form of rebellion. This was the law under which the people of the South lived, and to which they were subject, in common with the people of the North. The question therefore must be whether, though punishable by law, it was morally justifiable, as rebellion sometimes may be, though it very rarely is. But as soon as this question is stated, we see that it opens an inquiry of the widest kind, that it admits every argument of expediency or justice that may be urged for and against rebellions, and amongst these, but not to the exclusion of them, such arguments as may be drawn from the peculiar Constitution of the United States. The abstract assertion that the Southern States "had a right" to secede is merely illusory; it assumes the question which it affects to solve, and conceals this assumption by disguising it as a proposition of constitutional law. To say that the people composing a State would be morally justified not only in rebelling against the law, but in destroying at a blow the whole mass of interests dependent on the Union, without any reason at all except that they or a majority of them so willed it, would be absurd; we are therefore always thrown back on the question whether the reasons which they have to allege are sufficient. What then are those peculiarities of the American Constitution on which so much stress has been laid? Whoever reads the Constitution attentively will see, even without the aid of its history, and with that still more clearly, that it establishes a political society resem-

bling others, but with this characteristic feature, that the mass of powers which in most countries is gathered into one hand or set of hands is there divided in unequal shares between a general Government, composed of a Legislature and an Executive, and many local and State governments respectively organized on the same model. Each of these authorities, the general and the local, has within its own sphere power to make and execute laws, in the exercise of which it is perfectly independent of the other.[1] The apportionment limits the power of each, and therefore gives absolute sovereignty to neither. According to the Constitution, Congress could no more abolish slavery in Alabama whilst slavery existed there, or prohibit polygamy in any State which might think fit to allow polygamy, than it could establish slavery or polygamy in Massachusetts. Congress, therefore, is not sovereign or supreme in the precise sense of those words, and for the same reason those by whom Congress is elected are not sovereign or supreme. But behind both general and local authorities there is a power, intricate in respect of its machinery, and extremely difficult to set in motion, requiring the concurrence of three-fourths of the States acting by their Legislatures or in Conventions, which can amend the Constitution itself. This power is unlimited, or very nearly so. It could abolish slavery everywhere or establish it everywhere, and we have lately seen examples of its exercise. A proposed Amendment to the Constitution,

[1] The language of the Supreme Court in *Ableman* v. *Booth* (Howard's R., xxi, 506) is accurate, if the word sovereignty be not taken in its strict sense—"The powers of the general Government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State Judge or a State Court as if the line of division was traced by landmarks and monuments visible to the eye."

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recommended by Congress early in 1861 but never ratified, purported to provide that no future amendment should authorize Congress to abolish slavery in any State. The 13th Amendment abolished slavery.

What are the effects of this peculiar limitation and distribution of powers? They have kept alive, as I observed in the preceding chapter, the spirit of local independence in the States, and local allegiance in the people of the States; they appear to have clouded and confused, more or less, the sense of allegiance to the sovereignty of the nation.[1] By restricting also the powers of the general Government, they restrict the number of cases in which resistance to the general Government is unlawful. So far as regards the question we are now concerned with, they seem to have no other effects than these.

I have endeavoured to state, accurately and fairly, the

[1] An American of the North will hardly acknowledge this, because he is hardly sensible of it; but it was clearly so in the South. The difference is well expressed in the following extract quoted by Mr. Greeley (*American Conflict*, p. 427) from a Charleston letter in the *New York Herald* of 9th November, 1860:—

"It must be understood that there is a radical difference in the patriotism of a Northerner and a Southerner. The Northerner invariably considers himself as a citizen of the Union; he regards the Federal army and navy as his country's army and navy, and looks upon the Government at Washington as a great consolidated organization, of which he forms an integral part, and to which whatever love of country he may possess is directed. Beyond paying the State taxes, voting for State officers, and seeking redress primarily in the State Courts, he has very little idea of any special fealty being due to his own particular State.

"The Southerner, on the other hand, generally (and the South Carolinian always) repudiates this theory of consolidation. He feels that he owes allegiance to his own State, and to her alone; he is jealous of her rights and honour, and will never admit that any step taken in obedience to her mandate can involve the idea of treason. The Federal Government is, in his eyes, but the embodiment of certain powers delegated by the States from motives of policy. Let those motives be once removed or counterbalanced, and he holds that the State has no longer any reason for maintaining a connection which it was her right, at any time, to have dissolved."

only reasons which were ever alleged for secession. We are accustomed to associate in our minds the idea of revolt with that of grinding and intolerable oppression, or at the least of the privation of some rights, substantial in themselves, or dear to those who have been accustomed to enjoy them. But the people of the Southern States had suffered no oppression. They had been deprived of no rights. The internal government of these States had been perfectly free. In the direction of the general Government, in the nomination of the Executive, in the making and administration of the laws, they had enjoyed a more than ample share. Their industry was prosperous, and, though unthrifty and precarious, yielded large returns. On the very question upon which the chief stress had been laid, no legislation, no action, either of Congress or of the Executive, could possibly take place, which would materially alter their condition or affect their interests. If any danger threatened the species of property which was so valuable to them, it was still remote and obscure. To the Republicans themselves the abolition of slavery had not become a definite aim; it could be reached only with the consent of the slaveholders, or by a subversion of the Constitution, and it was surrounded besides by difficulties of various kinds which appeared insurmountable. Those who avowed that they wished for it, with the exception of a small handful of zealous agitators, looked forward to the accomplishment of their wish by indirect and gradual methods, without disturbance of the rights of property, and at an indefinite distance of time. And the Republicans, though the dissensions of their adversaries had enabled them to carry their candidate, were a minority in the House of Representatives, a minority in the Senate, a minority in the Union. The next election would probably have sent a Democratic President to the White House. I see no reason to doubt that, if the South had accepted Lincoln as it accepted

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Harrison and Taylor, slavery would at this moment have been as firmly established, and slave-industry at least as profitable, as they were ten years ago.

The orators and agitators of the South, however, reasoned otherwise. They insisted that the election of a President by a "sectional" vote—that is, by the votes of a majority composed of persons living north of a given geographical line—was an injury and a defiance to those who lived south of it; and they prophesied that the rights and institutions of the Southern States would soon be at the mercy of this majority. But the more ardent and plain-spoken among them frankly avowed that Mr. Lincoln's election was, in their eyes, only a favourable opportunity for the execution of a long-cherished design. The interests of North and South, they affirmed, had become palpably divergent, and it was for the advantage of the South to cut herself adrift and form an independent Confederacy of her own. Independent, she would be safer, stronger, richer, than in union—richer when she had no longer to share the profits of her industry with Northern merchants and manufacturers, safer and more powerful when her institutions and her policy should be under her own exclusive control.

That arguments so frail and calculations so unstable as these should have been thought to warrant so tremendous a conclusion, may well appear unaccountable. But behind them lay the true moving causes—an increasing sense of insecurity, a profound estrangement of feeling, a temperament suspicious of insult and quick to take fire, and the irritation engendered by a long and obstinate struggle. No election could be more strictly constitutional than Mr. Lincoln's, or more irreproachably fair. But it had in reality pitted against each other not parties merely but portions of the Union, animated by conflicting interests and passions, and had brought them into the sharpest antagonism. This was the conjuncture

of circumstances which Jefferson had foreboded forty years before, consoling himself with the thought that he should not live to see his fears realized.[1] The mastery fell into the hands of the more eager and restless spirits —a mastery hard to resist in a country where popular feeling runs with so strong a current as in the United States. Prudent and cautious men yielded to the stream, or were swept away by it; and the mass of the people prepared, with a sanguine audacity which afterwards rose into obstinate courage, to defy the terrible risk of a civil war.[2]

[1] "Although I had laid down as a law to myself, never to write, talk, or even think of politics, to know nothing of public affairs, and therefore had ceased to read newspapers, yet this Missouri question aroused and filled me with alarm. The old schism of Federal and Republican threatened nothing, because it existed in every State, and united them together by the fraternism of party. But the coincidence of a marked principle, moral and political, with a geographical line, once conceived, I feared would never more be obliterated from the mind; that it would be recurring on every occasion, and renewing irritations until it would kindle such mutual and mortal hatred as to render separation preferable to eternal discord. I have ever been amongst the sanguine in believing that our Union would be of long duration. I now doubt it much, and see the event at no great distance, and the direct consequence of this question, not by the line which has been so confidently counted on,—the laws of nature control this,—but by the Potomac, Ohio, and Missouri, or more probably the Mississippi upwards to our northern boundary. My only comfort and confidence is that I shall not live to see this."—*Memoirs and Correspondence*, vol. iv, p. 331.

[2] The *Albany Evening Journal*, a Republican paper, on the 30th of November, 1860, after speaking of the effect which Mr. Calhoun's influence had produced in South Carolina, described the feeling of the South in the following terms:—

"The contagion extended to other Southern States; and, by diligence, activity, discipline, and organization, the whole people of the Gulf States have come to sympathize with their leaders. The masses are, in their readiness for civil war, in advance of their leaders. They have been educated to believe us their enemies. This has been effected by systematic misrepresentations of the sentiments and feelings of the North. The result of all this is, that, while the Southern people, with a unanimity not generally understood, are impatient for disunion, more than one half of them are acting in utter ignorance of the intentions, views, and feelings of the North. Nor will the leaders permit them to be disabused.

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Those leaders know that Mr. Lincoln will administer the Government in strict and impartial obedience to the Constitution and laws, seeking only the safety and welfare of the whole people, through the prosperity and glory of the Union. For this reason, they precipitate the conflict; fearing that, if they wait for a provocation, none will be furnished, and that, without fuel, their fires must be extinguished.

"The Disunion sentiment is paramount in at least seven States; while it divides and distracts as many more. Nor is it wise to deceive ourselves with the impression that the South is not in earnest. It is in earnest; and the sentiment has taken hold of all classes with such blind vehemence as to 'crush out' the Union sentiment."

"'Disaffection lurked,' wrote Mr. Seward in 1861, 'if it did not openly avow itself in every department and in every bureau, in every regiment, and in every ship of war; in the Post-office and in the Custom-house, and in every Legation and Consulate from London to Calcutta. Of 4,470 officers in the public service, civil and military, 2,154 were representatives of States where the revolutionary movement was openly advocated and urged, even if not actually organized.'"—*Mr. Seward to Mr. Adams*, 10th April, 1861.

CHAPTER III.

Revolt of South Carolina, Georgia, and the Gulf States.—Organization of the Southern Confederacy.—Attitude of President Buchanan and of the Federal Congress.—Anxiety to avert a Conflict.—Fruitless endeavours to devise a Plan of Compromise.

Long before the election of 1860 the chances of Secession, and the arguments for it, had been canvassed throughout the South without any attempt at concealment; it had been openly threatened within the walls of Congress, and the 6th November found the plans of the leading Secessionists, if not complete, sufficiently matured for immediate action.

The foremost part in this rash enterprise was accepted, or assumed, by South Carolina. The South Carolinian is reputed hasty and impetuous by nature; the institutions of the State have retained a tincture of aristocracy, and nowhere else in America has so commanding an influence been commonly exercised by a few opulent families. It has been her pride, as a State, to be prompt in decision and fearless in action. The response of the Colony, in 1765, to the Massachusetts Circular was among the earliest and boldest steps towards American independence. "South Carolina," in the somewhat over-coloured language of Mr. Bancroft, "founded American Union."[1] Her fiery impatience in 1832 hurried her alone

[1] "As the united American people spread through the vast expanse over which their jurisdiction now extends, be it remembered that the blessing of union is due to the warmheartedness of South Carolina. 'She was all alive and felt at every pore.'"—*History of the American Revolution*," vol. ii, p. 335.

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to the very verge of revolt from that Union; and she was the first in 1860 to raise her hand against it.

The South Carolina Legislature had assembled on the 4th November. On the 7th, with hardly the formality of a discussion, an Act was passed summoning a Convention of delegates to be elected by the inhabitants of the State, and to meet at Columbia on the 17th December following. The Convention met, adjourned to Charleston, and immediately appointed a Committee to prepare an Ordinance of Secession. So rapid were its proceedings, that on the 20th the Ordinance was presented, and adopted by a unanimous vote; and South Carolina was on the same day solemnly proclaimed an independent commonwealth.[1] Her example was followed in quick succession by Florida, Mississippi, Alabama, Georgia, Louisiana, and Texas. In all of these States Conventions were held, on the summons either of the Legislature or of the Governor, and Ordinances of Secession passed; and each, one by one, declared itself free, sovereign, and independent. The dates of these proceedings are shown in the subjoined Table :—

State.	Convention met.	Ordinance passed.	Majority in Convention.
Florida	3rd Jan. 1861	10th Jan. 1861	62 to 7
Mississippi	7th ,,	9th ,,	84 to 15
Alabama	7th ,,	11th ,,	61 to 39
Georgia	17th ,,	19th ,,	208 to 89
Louisiana	23rd ,,	25th ,,	113 to 17
Texas	28th ,,	1st Feb. 1861	166 to 7

[1] This Ordinance, on the model of which those of other seceding States were afterwards framed, was in the following terms :—

"*An Ordinance to dissolve the Union between the State of South Carolina and other States united with her under the compact entitled 'The Constitution of the United States of America.'*

"We, the people of the State of South Carolina, in Convention assembled, do declare and ordain, and it is hereby declared and ordained, that the Ordinance adopted by us in Convention on the 23rd day of May, in the year of our Lord 1788, whereby the Constitution of the United States was ratified, and also all Acts and parts of Acts of the General Assembly of

In Texas the Ordinance, after being adopted by the Convention, was submitted to the people of the State for ratification. The majority for secession was 34,794, the minority against it 11,235. The Convention in this State was summoned by a private requisition, but was sanctioned by the Legislature.

All marks of the Federal sovereignty within the seceding States were immediately effaced, and all the instruments through which the general Government had exercised its constitutional powers were destroyed, or appropriated by the State Governments. The Circuit and District Courts ceased to sit, and the Federal tribunals were supplanted by those of the State; the State authorities took possession of custom-houses and post-offices; Federal officials resigned, or were dismissed, or passed into the service of the State and took the oath of allegiance to it. The Federal arsenals at Charleston, Mount Vernon, Augusta, Baton Rouge, and Mobile, the Pensacola navy-yard, the forts commanding the approaches to Savannah, Mobile, and New Orleans, were seized and wrested from the Federal Government, without a shot fired or a blow struck, as well as Forts Moultrie, Castle Pinckney, and Sullivan's Island in South Carolina, and Forts Barrancas and McRae, near Pensacola. All of these seizures were effected before the end of January, and some of them without waiting for the passing of a Secession Ordinance, the active secessionists throughout the South being in regular correspondence with one another, and the Governors for the most part warmly devoted to the cause. In Texas, where the United States had a regular force about 2,500 strong, Commissioners were sent to the head-quarters of the officer commanding the department, with

the State ratifying amendments of the said Constitution, are hereby repealed, and the Union now subsisting between South Carolina and other States, under the name of 'The United States of America,' is hereby dissolved."—*American Annual Cyclopædia* for 1861, p. 650.

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instructions to demand the withdrawal of the troops and a surrender of the ordnance stores and public property under his control. A military force was organized to support these demands. General Twiggs, a Georgian by birth and an officer of long service, yielded to them, and marched his soldiers to the coast, whence they were conveyed to the North—an act of timidity or supineness for which he was soon afterwards cashiered. Two detachments, which had been left behind in his retreat, subsequently surrendered to a superior force and were dismissed on parole. Two military posts of some strength—Fort Sumter at the mouth of Charleston harbour, and Fort Pickens situated on the extremity of a long island which bars the entrance of Pensacola Bay —continued to be held for the United States by officers whose fidelity was unshaken; but, except at these isolated points, the authority of the Federal Government had everywhere throughout the seceding States ceased to be acknowledged, and every symbol of the Union had disappeared.

The revolt of this group of States was effected, as we have seen, not suddenly or simultaneously, but by a series of acts extending over a considerable time, without violence or disorder, and with as near an approach perhaps as a revolt is capable of to formal regularity of proceeding. The declaration of independence was preceded in every case by the holding of a Convention; and, in the choice of delegates, "secession or no secession" was known to be the real issue presented to the electors. The authority of the Union was dethroned and *de facto* abolished; but in the internal administration of the several States there was no violent displacement of power, since none was called for, and in most instances there was no change at all. If the South had succeeded in severing itself from the Union, the complete sovereignty of these States, as regards their internal government and laws, must have been held to date from

their respective declarations. This could hardly be disputed at least by an American jurist.[1]

Yet in most of these States, if not in all, opinion during the earlier stages of the revolt was far from being unanimous. The division was especially marked in Alabama,—where the northern and upland counties were generally Unionist,—in Mississippi, Louisiana, and Texas. Men whose station, character, and experience made them respectable, were found to urge, not only that secession was not justified by the election of a Republican President, but that it was inexpedient. The South and its institutions, they urged, even slavery itself, were really safer under the Constitution than they would be if the Union were dissolved. No one spoke more eloquently in this sense than Mr. A. H. Stephens, of Georgia, who, scarcely three months later, became Vice-President of the Confederacy. Few, however, appear to have directly opposed Secession; the many who dreaded the movement, and followed it reluctantly, confined themselves for the most part to counselling delay and co-operation among the Slave States, in preference to separate action. But opposition and reluctance were everywhere overborne and silenced, sometimes perhaps by direct intimidation, but more generally by that instinctive deference which Americans, like Englishmen, are accustomed to yield to the decision of majorities, as well as by the strong and blinding attachment which the Southerner cherished towards his State.[2] To his appre-

[1] See the well-known case of *McIlvaine* v. *Coxe's Lessee*, Cranch, iv, 212.

[2] Of the state of feeling in Texas General Houston wrote as follows, in September 1861:—

"The time has been when there was a powerful Union sentiment in Texas, and a willingness on the part of many true patriots to give Mr. Lincoln a fair trial in the administration of the Federal Government. There was also a time when many of the best men in the country hoped that by an energetic demonstration they might bring about a reconstruction of the Government upon such principles as might guarantee the rights of the South. These times have passed by, while Union and reconstruction have become obsolete terms, or, if even mentioned, it is

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hension this was patriotism; duty to his State ranked high, perhaps highest, among his public duties. With men like Lee and Maury, and many thousands more, this was the ruling motive. The sword once drawn, such men, though they would never have unsheathed it voluntarily, felt bound to side with their own Government and their own people, threw themselves into the cause with unhesitating gallantry, and adhered to it with unswerving constancy. And yet I think it must always be a doubtful question whether there would ever have been a secession at all, but for the deliberate temerity of South Carolina.

Even before the revolt was consummated, preparations had been made in the seceding States to form a Confederacy for their common government and defence. Delegates from all except Texas, which had not yet seceded, met on the 4th February at the town of Montgomery in Alabama, and proceeded to organize themselves as a General Convention and Provisional Congress of the "Confederate States of North America," to establish a temporary form of Government, and elect a President and Vice-President. For the Presidency their choice fell on Mr. Jefferson Davis, a Mississippi planter, who had sat as Senator in Congress, and had long exercised a commanding influence among the politicians of the South. Educated at the Military Academy at West Point, he had served in Mexico, and had held the office of Secretary at War. Mr. Davis hastened at once to Montgomery, took the oath of office, formed a Cabinet, and threw himself into the arduous work of organizing the resources of the Confederacy. On the 11th March the temporary form of Government, which had been

only in reference to past events. If there is any Union sentiment in Texas, I am not apprised of it."—*American Annual Cyclopædia* for 1861, p. 692.

General Houston had himself been unwilling to follow the movement, and had been deprived of the Governorship for refusing to take the oath of allegiance to the Confederacy.

borrowed from the Constitution of the United States, was superseded by a permanent Constitution, framed on the same general model, but containing an express prohibition of protective duties, and a declaration that in all new territories which the Confederate States might acquire, negro slavery, as it existed in those States, should be recognized and protected by the territorial Legislatures and by Congress.[1] This Constitution was forthwith submitted for ratification in each of the seven seceding States, not to the popular suffrage, but to the Convention by whose instrumentality the work of secession had been accomplished; and each, by a vote of its Convention, laid down its lately acquired independence, and took its place within the new Confederacy.

"The internal affairs of the Confederate Government," says a painstaking and generally accurate chronicler, "were early placed upon an organized and efficient system. The withdrawal from the United States and the creation of a Confederacy caused but few changes, and these consisted rather in the persons who held public offices than in any change in the nature of the offices themselves. The transmission of the mails was gradually suspended by the Federal Government after the secession of each State, and was entirely assumed by the Confederate Government within the limits of the Confederate States after the 31st of May. The Courts of the United States were also organized as Courts of the Confederate States, and the officers of the army and navy who resigned became officers in the

[1] The Convention sat and acted as a Provisional Congress from February 1861 to February 1862, when it was succeeded by the first regular Congress of the Confederate States, which sat for two years. The second Congress met on the 19th February, 1864, and ceased to exist on the dissolution of the Confederacy. Mr. Davis was chosen Provisional President for one year, from 18th February, 1861, to 19th February, 1862. In the autumn of 1861 he was elected, under the Constitution, President for six years, and held office till the same catastrophe.

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army and navy of the Confederate States. Revenue officers, in like manner, continued as such under the new Government."[1]

What, during the progress of the events which have been briefly told, was the attitude of the Federal Government and of the States which remained faithful to the Union?

The vote of November, momentous as were the consequences attached to it, made no immediate change in the Federal Executive. In the eye of the law that vote did but nominate 303 persons, whose duty it was to elect a President; the election itself took place early in December, and the votes then given were transmitted under seal to Washington, to be opened and counted on a stated day, in the presence of the House of Representatives and the Senate; at the conclusion of this ceremony, which took place on the 13th February, the name of the successful candidate was for the first time publicly announced by the Vice-President, Mr. Breckinridge, and on the 4th of March he entered on the duties of his office. The object which the framers of the Constitution contemplated when they made the election indirect is frustrated, for, except in form, the election is not indirect; the delay which they deemed necessary has been made unnecessary by the increasing swiftness of communications; but the old machinery is retained, and for four months after the choice of the nation has been ascertained the President elect con-

[1] *American Annual Cyclopædia* for 1861, p. 1512.

Mr. Davis, in his Message to Congress (29th April, 1861), said, "Since your adjournment all the Courts, with the exception of those of Mississippi and Texas, have been organized by the appointment of marshals and district attorneys, and are now prepared for the exercise of their functions. In the two States just named the gentlemen confirmed as Judges declined to accept the appointment, and no nominations have yet been made to fill the vacancies."—See also *Acts and Resolutions of the Provisional Congress of the Confederate States*, Tyler & Co., Richmond, 1861.

tinues to be a private citizen, and the Government to be administered as before by the person whom he is destined to succeed. When the change of President denotes also a change of policy, this arrangement has its inconveniences, which are liable to become serious should occasion arise for prompt and decided action. Mr. Buchanan then continued until the 4th March, 1861—that is, until the revolt of the Gulf States was complete—to be the Chief Magistrate of the Union; and it has been commonly affirmed in America that to his supineness and the disloyalty of his Ministers the calamities of the four ensuing years were largely due. There was disaffection — perhaps there was treachery —in the President's Cabinet, and he was himself irresolute and supine. But in justice to Mr. Buchanan it must be remembered that he had been borne into office as a Democrat and by the Democratic party, that a majority of Americans were, or had been, Democrats, and that to men imbued with these principles the idea of coercing a refractory State—though, as Jackson had shown, not intolerable—was still distasteful in the highest degree. It must be remembered also that the seven middle States were trembling on the verge of revolt, pulled hither and thither by contending influences, protesting vehemently against coercion, and calling out for concessions which they were themselves unable to specify or define. Representatives of these States sat in Congress until after the 1st of March. The Gulf States themselves were represented there until they had formally resolved on secession. Moreover, it cannot be stated too plainly that as to the course which ought to be pursued towards the South, opinion was, and long continued to be, wavering and undecided. The sentiment which predominated throughout the North was a sincere desire to tranquillize and win back the South, if possible, by any reasonable measures of conciliation. And behind this was a feel-

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ing, not dominant indeed but strong, which found expression in Congress, at public meetings, and in the press, was shared by many Republicans and openly avowed by men of great eminence and unimpeached patriotism, that should conciliation prove hopeless, a peaceable separation ought to be preferred to civil war. It was natural that this should be so. When men are really plunged in such a struggle, when their passions are roused and their nerves braced, and they have come to apprehend thoroughly the value of the interests at stake, the thought of yielding becomes a crime, and to have nourished it passes for a reproach. But they feel otherwise whilst the calamity is still in prospect, and is not known to be inevitable.

The President's own view of the character of the revolt and of his own duties was expressed in his annual Message of the 4th December, 1860, and fortified by a written opinion from Mr. Black, an eminent Pennsylvanian lawyer, then Attorney-General and afterwards Secretary of State. It is unquestionably true, said Mr. Buchanan, that no State has or can have a right to secede from the Union, which was clearly intended to be perpetual. But the Constitution does not arm the President with power to enforce the laws, except through the machinery of the Federal Courts and in aid of process issued by them; there are now no Federal Courts in South Carolina, and it would be impracticable to re-establish them there. Again, it is only by waging war on South Carolina that Congress could "coerce her into submission." But the Constitution gives no such power to Congress. Having satisfied himself that there was no escape from this curious puzzle, Mr. Buchanan resigned himself to inaction. He sat still. He refused, on the one hand, to receive or recognize the two Commissioners whom South Carolina had sent to negotiate for the transfer of public property within the State and an apportionment of the public debt; he refrained, on the

other, from any attempt to re-establish his authority in the South, to collect the revenue or enforce the laws.

Nor, feeble and unsatisfactory as the Message was deemed by the Republican party, does this inertness appear to have provoked in either House of Congress remonstrance or complaint. No extraordinary appropriations were made for the army or navy. The Session which began on the 3rd December, 1860, and closed on the 4th March, 1861, was chiefly spent in long and desultory debates on various projects of conciliation. During the latter part of this period a voluntary Convention of 135 persons, assembled at Washington on the request of the Virginian Legislature, and representing all the States not actually in revolt, were engaged, under the presidency of Mr. Tyler, in the same fruitless labour. These discussions produced no substantial result. Proposal after proposal was eloquently debated, only to be set aside in its turn when the moment came for action. It was in the evening of Sunday the 3rd March, "at an unusual hour at the close of a peaceful day," that the Senate met for the last time to decide on the recommendations presented by the Peace Conference, on another elaborate and important series known as Mr. Crittenden's, and on a further proposition emanating from the minority of a committee of its own body. The debate, which lasted far into the night, ended in the rejection of them all. The House of Representatives, on the 27th February, after the members for the seceding States had withdrawn, agreed, by a majority of 136 against 53, to the following string of Resolutions, which have importance only as showing how the Republican party, at that time rising into the ascendant, were prepared to deal with the slavery question immediately before the commencement of the war :—

"*Resolved*, That all attempts on the part of the Legislatures of any of the States to obstruct or hinder the recovery and surrender of fugitives from service or labour are in derogation of the Constitution of the

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United States, inconsistent with the comity and good neighbourhood that should prevail among the several States, and dangerous to the peace of the Union.

"*Resolved*, That the several States be respectfully requested to cause their statutes to be revised, with a view to ascertain if any of them are in conflict with or tend to embarrass or hinder the execution of the laws of the United States, made in pursuance of the second section of the fourth article of the Constitution of the United States, for the delivering up of persons held to labour by the laws of any State and escaping therefrom; and the Senate and House of Representatives earnestly request that all enactments having such tendency be forthwith repealed, as required by a just sense of constitutional obligations, and by a due regard for the peace of the Republic; and the President of the United States is requested to communicate these resolutions to the Governors of the several States, with a request that they will lay the same before the Legislatures thereof respectively.

"*Resolved*, That we recognize slavery as now existing in fifteen of the United States by the usages and laws of those States; and we recognize no authority, legally or otherwise, outside of a State where it so exists, to interfere with slaves or slavery in such States, in disregard of the rights of their owners or the peace of society.

"*Resolved*, That we recognize the justice and propriety of a faithful execution of the Constitution, and laws made in pursuance thereof, on the subject of fugitive slaves, or fugitives from service or labour, and discountenance all mobs or hindrances to the execution of such laws, and that citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

"*Resolved*, That we recognize no such conflicting elements in its composition, or sufficient cause from any source, for a dissolution of this Government; that we were not sent here to destroy, but to sustain and harmonize the institutions of the country, and to see that equal justice is done to all parts of the same; and finally, to perpetuate its existence on terms of equality and justice to all the States.

"*Resolved*, That a faithful observance, on the part of all the States, of all their constitutional obligations to each other and to the Federal Government, is essential to the peace of the country.

"*Resolved*, That it is the duty of the Federal Government to enforce the Federal laws, protect the Federal property, and preserve the Union of these States.

"*Resolved*, That each State be requested to revise its statutes, and, if necessary, so to amend the same as to secure, without legislation by Congress, to citizens of other States travelling therein, the same protection as citizens of such State enjoy; and also to protect the citizens of other States travelling or sojourning therein against popular violence or illegal summary punishment, without trial in due form of law, for imputed crimes.

"*Resolved*, That each State be also respectfully requested to enact

such laws as will prevent and punish any attempt whatever in such State to recognize or set on foot the lawless invasion of any other State or territory.

"*Resolved*, That the President be requested to transmit copies of the foregoing resolutions to the Governors of the several States, with a request that they be communicated to their respective Legislatures."

One proposition, and only one, obtained the concurrent assent of both Houses. It was as follows :—

"That the following Article be proposed to the Legislatures of the several States as an Amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as part of the said Constitution, namely :—

"'No Amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labour or service by the laws of said State.'"

This vote was made abortive by the circumstances which immediately followed.

All endeavours then to repair, by one more compromise, a breach which had been gradually widening in spite of repeated compromises proved utterly vain. They were, indeed, well nigh hopeless from the first. Originated chiefly by politicians from the Middle States, among which Kentucky took the lead, they offered no prospect of a solid and durable reconciliation. Few Republicans could have accepted them with a clear conscience, and they were really distasteful to the thorough-going secessionists, who took no part in the Peace Conference, and during the debates in Congress on Mr. Crittenden's scheme had either stood aloof or given it a cold and languid support. The object of their desires was not a redress of grievances; they had, indeed, none which legislation could redress. No action of Congress, no mere patching of the Constitution, could, they well knew, arrest the growth of population in the North and West, stifle in that population the freedom of thought and speech, or secure to the South a permanent lease of power. What they dreaded was this steady, irresistible

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advance of an interest and sentiment hostile to their own; what they aspired to was the foundation of an independent commonwealth which should absorb the Middle States, drain the resources of the North, and command the West. No fresh compromise could now dissipate that fear, or divert them from the pursuit of that chimera.

NOTE.

Among the Acts passed by the Provisional Congress of the Confederate States during its first Session are the following:—

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February 9.—To continue in force certain laws of the United States of America.

„ 14.—To continue in office the officers connected with the collection of the Customs in the Confederate States of America.

„ 20.—To provide munitions of war and for other purposes. [Authorizes President or Secretary of War under his direction to make contracts for the purchase of heavy ordnance and small-arms, and manufacture of powder.]

„ 21.—To fix salaries of Vice-President and Heads of Departments.

„ 21.—To organize the Departments of State, and the Treasury, War, Navy, and Post-Office Departments, and a Department of Justice (six Acts).

„ 23.—To prescribe the Rates of Postage in the Confederate States of America.

„ 25.—To declare the free navigation of the Mississippi.

„ 26.—To modify the Navigation Laws and repeal all discriminating duties on ships or vessels.

„ 26.—For the establishment and organization of a General Staff for the Army of the Confederate States of America.

„ 28.—To authorize the Secretary of the Treasury to establish ports and places of entry and delivery.

„ 28.—To raise money for the support of the Government, and to provide for the defence of the Confederate States

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of America. [Authorizes a loan of 15,000,000 dollars, and an export duty of $\frac{1}{8}$th of a cent per pound on raw cotton.]

February 28.—To raise Provisional Forces for the Confederate States of America, and for other purposes.

March 6.—To provide for the Public Defence. [Authorizes President to employ militia, military and naval forces, of the Confederate States, and to ask for and accept services of volunteers not exceeding 100,000.]

„ 6.—To provide for the registration of vessels owned by citizens of the Confederate States.

„ 6.—To establish a Light-house Bureau.

„ 6.—For the establishment and organization of the Army of the Confederate States.

„ 7 & 8.—To create the clerical force of the Executive Departments (including the Navy Department).

„ 9.—To authorize the issue of Treasury Notes.

„ 11.—Making appropriations for the support of 3,000 men for twelve months, to be called into service at Charleston, and for the support of the Regular Army of the Confederate States. (Two Acts.)

„ 11.—To establish a Court of Admiralty and Maritime Jurisdiction at Key West, Florida (Amended 16th March).

„ 15.—Making appropriations for the Legislative, Executive, and Judicial expenses of Government.

„ 15.—To authorize the appointment of Commercial Agents or Consuls to foreign ports.

„ 15.—To authorize the construction or purchase of ten steam gunboats (five to be of a tonnage not exceeding 750 tons, and five not exceeding 1,000 tons).

„ 15.—Making appropriations for the support of the Navy.

[The appropriations are as follows:—

" 1st. For the pay of officers of the navy on duty and off duty, based upon the presumption that all the grades authorized by the Act of 1861 will be filled, 131,750 dollars.

" 2nd. For the pay of officers, non-commissioned officers, musicians, and privates of the marine corps, 175,512 dollars.

" 3rd. For provisions and clothing and contingencies in paymaster's department, 133,860 dollars.

" 4th. For the pay of warrant and petty officers, and of seamen, ordinary seamen, landsmen, and boys, and engineer's department, 168,000 dollars.

" 5th. For expenditures which will be required for coal for the use of steamers, 235,000 dollars.

" 6th. For the probable cost of 10 steam-gunboats for coast defences of the Confederate States, to be built or purchased as may be most convenient, 1,100,000 dollars.

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" 7th. For the probable cost of completing and equipping the steam sloop *Fulton*, now at the Pensacola navy yard, 25,000 dollars.

" 8th. For the pay of officers and others at the navy yard, Pensacola, 54,363 dollars.

" 9th. For compensation of four clerks on duty at the Navy Department as per Act of 11th March, at 1,500 dollars each, 6,000 dollars."]

March 16.—To provide for the organization of the Navy. [Authorizes President to appoint 4 Captains, 4 Commanders, 30 Lieutenants, &c., and to employ as masters, midshipmen, naval constructors, warrant and petty officers, and seamen, any number not exceeding 3,000.]

„ 16.—To establish the Judicial Courts of the Confederate States of America. [This Act, of 54 sections, provides a complete judicial machinery, modelled on that of the United States. The District Courts to have admiralty and maritime jurisdiction.]

CHAPTER IV.

Accession of President Lincoln.—His Character, and the Commencement of his Administration.—Attempt to provision Fort Sumter; followed by the Bombardment and Reduction of the Fort.—Proclamation calling for 75,000 Men.—Revolt of Virginia, North Carolina, Arkansas, and Tennessee.—Attitude of Kentucky, Maryland, and Delaware.—Events in Missouri.—The Arsenal at Harper's Ferry and the Norfolk Navy Yard fall into the hands of the Confederates.—Troops raised for the Defence of the Confederacy.—Mr. Davis's Proclamation offering Letters of Marque.—President Lincoln's Proclamations of Blockade.—Naval Resources of the United States; of the Confederacy.—Successive Levies of Troops by the Federal Government.—Military Operations.—Campaign on the Potomac.—Observations on the Character and Magnitude of the Revolt.

On the 4th March, 1861, Mr. Lincoln took office as President of the United States. A native of Kentucky, born of poor parents, and bred up in a log cabin in what was then the Far West, he had struggled in early years for a livelihood, trying, as was common in that rough and primitive society, one occupation after another, until he finally attained the position of a country lawyer in good practice. He had been elected, when twenty-five years old, to the Legislature of his own State, Illinois; had sat for three years in Congress and been a candidate against Mr. Douglas for the Senatorship; and was known as a terse and ready speaker. The obscurity of his birth and early life, his homely air and rough humour, created, on his sudden elevation to the highest dignity in the United States, a prejudice against him which was really injurious to his office, and was never quite overcome.

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Nor does he appear to have been a man of quick or commanding judgment. But his understanding was robust, his character straightforward and steadfast, his sense of public duty keen and high; and these qualities, joined to a serene temper and a disposition singularly gentle and kind, enabled him to serve his country better than she might have been served by a far abler man. In politics he had been an "old Whig" and fervent admirer of Henry Clay, and was now a staunch but sober Republican. "I have no purpose," he had said, "directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so." And he repeated these words in his Inaugural Address. But no man had more firmly opposed the extension of slavery into the Territories, or more unreservedly expressed the conviction that sooner or later it must perish in the States themselves. His Cabinet, formed immediately after his accession to office, was, of course, Republican; four of its members, indeed, had been proposed at the Chicago Convention as candidates for the Presidency; and the Secretaryship of State was assigned to Mr. Seward, a man of shining ability, who had headed the list of candidates until the third ballot, when the choice of the party fell on Mr. Lincoln.

Mr. Lincoln found the seven Confederated States in open and flagrant revolt from the Union. They had usurped its powers, removed its officers, seized its forts, stores, and money, and were levying and appropriating the duties which should have found their way into its treasury; they had organized a Government of their own, and insisted on their right to treat the United States as a foreign Power. They were preparing to raise an army and navy, and one of their forts had opened fire on a steam-ship hoisting the American ensign. To enforce the authority of the Union, or to

surrender it altogether, withdraw the remaining garrisons, and rest in the hope that time might dissolve the Confederacy and bring the seceders back again, were the two alternatives between which the choice really lay. Yet for a little while, perhaps, it might still be possible to temporize. Mr. Lincoln proposed to temporize; but his plan of action, which was stated somewhat obscurely in his Inaugural Address, was one which could hardly fail to lead straight to war:—

"I consider that, in view of the Constitution and the laws, the Union is unbroken, and, to the extent of my ability, I shall take care, as the Constitution itself expressly enjoins upon me, that the law of the Union is faithfully executed in all the States. Doing this I deem to be only a simple duty on my part; and I shall perform it, so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or, in some authoritative manner, direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it will constitutionally defend and maintain itself.

"In doing this there need be no bloodshed or violence; and there shall be none, unless it be forced upon the national authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts; but, beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere. Where hostility to the United States, in any interior locality, shall be so great and universal as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right may exist in the Government to enforce the exercise of these offices, the attempt to do so would be so irritating, and so nearly impracticable withal, I deem it better to forego, for the time, the uses of such offices.

"The mails, unless repelled, will continue to be furnished in all parts of the Union."

In pursuance of this plan, he resolved, instead of withdrawing the garrison from Fort Sumter,—a place ascertained to be indefensible,—to provision it, or at least to make the attempt to do so.

It is uncertain at what time this decision was formed. Early in March, the Confederate Government

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had sent Commissioners to Washington with instructions to endeavour to arrange terms for a peaceable separation. They had applied, on the 12th March, for leave to present their credentials, and it was not until three weeks later that they received a formal answer, which was, as might be expected, a civil but peremptory refusal. This delay has never been fully explained: by some it has been ascribed to the officious interference of one of the Judges of the Supreme Court, who was a friend of the South—by others to vacillation—by others, again, to a deliberate design to gain time for preparation, whilst amusing the Confederates with a vain hope of being permitted to negotiate. Be this as it may, nothing appears to have been done before the 1st April. On that and the following day orders were sent to Brooklyn and Governor's Island to fit out several vessels with the utmost despatch; and between the 6th and the 10th, the ships following one another as they were got ready, an expedition put to sea and sailed southwards. It consisted of a large merchant-ship chartered by the Government and laden with provisions for Fort Sumter, and a small armed steam-cutter, the *Harriet Lane*, with two transports, full of men and military stores, attended by the steam-frigate *Powhatan*. These last appear to have been destined for Fort Pickens, in Alabama, the reinforcement of which was afterwards accomplished without difficulty. The gun-boats *Pocahontas* and *Pawnee* were at the same time dispatched from Norfolk.

Fort Sumter, three miles and a-half from Charleston, and commanding the entrance to the harbour, had been a constant object of jealousy and uneasiness to the Confederates, and of perplexity to the Federal Government; and many informal communications bearing reference to it had passed to and fro, both before and after the accession of Mr. Lincoln. President Buchanan had steadily refused to abandon the fort, and asserted his resolution to

defend it against attack, both as a military post and as "public property" of the United States; and this had led to dissensions in his Cabinet, and furnished a pretext at least for the resignation of some of its disaffected members. The Confederates, on the other hand, had declared themselves resolved to regard any attempt to reinforce the garrison as a menace to their independence and an act of war. Early in January an unarmed steam-ship, the *Star of the West*, had been actually sent thither from New York with troops and stores, but was driven back by the batteries on Morris Island and Fort Moultrie, after having been ten minutes under fire; and the attempt was not renewed. The fort itself, a structure of solid masonry, some sixty feet high, rising sheer out of the water and capable of mounting 140 guns, was well adapted for its intended purpose,—defence against attacks from the sea. But it was now exposed to the fire of the powerful batteries, which, under the superintendence of Brigadier-General Beauregard, an engineer officer of Southern extraction formerly in the United States' service, had been completed with much labour and skill on both shores of the inlet; and it was further threatened on the side of the town by a floating battery, heavily armed. The garrison was small, their stock of ammunition low, and their provisions almost exhausted; and the number of guns available did not exceed forty-eight, many of which, being *en barbette*, were practically useless under a well-aimed vertical fire.

On the 8th April, before the whole of the relieving expedition had left New York, notice that provisions were about to be sent to the garrison, "peaceably, or otherwise by force," was delivered by an officer of the United States' army to the civil and military authorities at Charleston, by whom it was transmitted to the Confederate Secretary at War. The fort was summoned on the 11th, and by the afternoon of the 13th it was reduced, after a heavy but bloodless bombardment of

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many hours. Major Anderson capitulated on honourable terms, and was conveyed with his handful of soldiers to New York in the same vessel which had brought their intended supplies. The ships composing the expedition had appeared off the bar before the attack began, a gale blowing at the time; but they remained spectators of the combat, and did not venture, as indeed they could not usefully have done, within the range of the Confederate batteries.

With these events vanished instantly all hopes of a peaceable separation or a peaceable reunion, and no future historian will hesitate to date from them the commencement of the civil war. The sword was drawn, and all over the country it was thoroughly understood that the question whether the revolted States were to be regained by the Republic or lost to her for ever must now be decided by force.

On the day following that on which Fort Sumter had been evacuated, the following Proclamation, under the President's signature, was issued by the Government at Washington:—

"PROCLAMATION.

"Whereas the laws of the United States have been for some time past and now are opposed, and the execution thereof obstructed, in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law:—

"Now, therefore, I, Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth, the militia of the several States of the Union, to the aggregate number of 75,000, in order to suppress said combinations, and to cause the laws to be duly executed.

"The details for this object will be immediately communicated to the State authorities through the War Department.

"I appeal to all loyal citizens to favour, facilitate, and aid this effort to maintain the honour, the integrity, and the existence of our National Union, and the perpetuity of popular Government, and to redress wrongs already long enough endured.

"I deem it proper to say that the first service assigned to the forces called forth will probably be to re-possess the forts, places, and property which have been seized from the Union; and in every event the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of or interference with property, or any disturbance of peaceful citizens in any part of the country.

"And I hereby command the persons composing the combinations aforesaid to disperse and retire peaceably to their respective abodes within twenty days from this date.

"Deeming that the present condition of public affairs presents an extraordinary occasion, I do hereby, in virtue of the power in me vested by the Constitution, convene both Houses of Congress.

"Senators and Representatives are therefore summoned to assemble at their respective Chambers, at 12 o'clock, noon, on Thursday, the 4th day of July next, then and there to consider and determine such measures as, in their wisdom, the public safety and interest may seem to demand.

"In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the City of Washington, this 15th day of April, in the year of our Lord 1861, and of the Independence of the United States the 85th.

(Signed) "ABRAHAM LINCOLN."

An accompanying circular, signed by the Secretary of War, informed the Governors of the several States that the men would be required to serve for three months unless sooner discharged.

Throughout the Free States of the Union this call was answered with the greatest alacrity. Three Massachusetts regiments were on their road in little more than forty-eight hours after it reached Boston; a regiment from Indiana, and one from New York, marched on the 18th, and troops were soon pouring into Washington from every part of the North and West. On the Middle or Border Slave States the summons to action produced a very different effect, and the revolt, which speedily followed, of four of these States to the Southern Confederacy, forms another important era in the history of the war.

Virginia, North Carolina, Tennessee, Arkansas, Missouri, Kentucky, and Maryland had hitherto refrained from casting in their lot with the South. Their sym-

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pathies, as Slave States, were more or less strongly Southern; but they were extremely unwilling to desert the Union. In all, except South Carolina, there was a division of interests; party spirit in most of them ran high, and in some—especially Arkansas, Missouri, and Tennessee—there was an element of violence and lawlessness which had a tendency to make dissensions fierce and dangerous. In the contests for the Presidency, these States, as we have seen, had given the bulk of their votes to the neutral candidate, and during January and February they had made anxious efforts to promote a compromise. In all, except Kentucky and Maryland, Conventions had been summoned, but in none of them had the secessionists been able to secure the passing of an Ordinance. In North Carolina and Tennessee the holding of a Convention had been negatived by the popular vote. Such, throughout this large zone of the Union, was the situation of affairs, until the attempt to provision Fort Sumter forced upon the people the hard necessity of taking arms, either against the Union to which they earnestly wished to adhere, or against that portion of their countrymen with whom they had been long accustomed to feel and act in common. Thus pressed, Virginia, North Carolina, Arkansas, and Tennessee chose the former alternative. Kentucky struggled hard for some time to preserve a neutrality which had become impossible, and finally threw in her lot with the Union. The little State of Delaware, a mere slip of sea-coast with scarcely 1,800 slaves, made the same choice, but without hesitation. She had no militia, but answered the President's call by sending volunteers. Maryland, secessionist at heart and at first turbulent and unmanageable, was soon held firmly in the gripe of the Federal army. Within her limits was the district of Columbia, the seat of the Government of the United States; through them also ran the high road to the region which was destined to become the principal theatre of war; whilst her

narrow straggling territory, overhung along its whole northern boundary by free Pennsylvania, was estimated to contain not less than 50,000,000 dollars' worth of slaves. The distant State of Missouri had, like Maryland, a military importance derived from its situation; for the possession of it might be said to command, more or less, Kansas and the great territories of the South-West. She never actually seceded, but her Governor and Legislature were secessionist, and the State soon became, and long continued, the scene of desultory hostilities, sustained at first by troops raised within the State and fighting in its name, and later by detached wings of the great Confederate army. These events have been mentioned, for the sake of convenience, a little out of their chronological order. Nor were the acts by which the four seceding States purported to sever themselves from the Union formally completed until some time afterwards.[1] But these acts had in all

[1] *Virginia*—

April 17th. Ordinance of Secession passed by Convention (88 to 55).

May 23rd. Ordinance ratified by popular vote (128,884 to 32,134).

[A considerable portion of Virginia broke off and remained faithful to the Union, and was subsequently erected, with some adjoining counties, into a separate State, under the title of Western Virginia. It contained nearly a fourth of the whole white population, and embraced the Valley of the Kanawha and the greater part of the tract west of the Alleghanies sloping down to the Ohio, together with the long narrow strip which runs up between the States of Ohio and Pennsylvania, nearly to the latitude of New York, and to which its shape and position have given the nickname of the "Pan-handle."]

North Carolina—

April 26th. Legislature summoned.

May 1st. Legislature met, and called Convention.

May 21st. Secession Ordinance passed unanimously.

Tennessee—

May 7th. Ordinance of Secession passed by the Legislature.

June 8th. Ordinance ratified by popular vote (104,913 to 47,238).

[East Tennessee was strongly Unionist.]

Arkansas—

May 6th. Ordinance passed by Convention (69 to 1).

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of them been forestalled, not only by popular movements, but by their Governments and Legislatures. On the 25th April the Virginian Convention, in the name of the Commonwealth, had entered into a formal Treaty with the Confederate States, under which, until the Union should be perfected, "the whole military force and military operations, offensive and defensive, of the said Commonwealth in the impending conflict with the United States," were placed under the direction and control of the President of the Confederacy "on the same principles, basis, and footing as if the said Commonwealth were now and during the interval a member of the Confederacy." The Governor of Tennessee was empowered by his Legislature, on the 1st May, to conclude a like Treaty; and the Treaty itself was ratified by the Senate on the 7th. Still earlier the forts on the coast of North Carolina had been seized and armed, and these, with the arsenals of Fayetteville in that State and of Little Rock in Arkansas, were handed over to the Confederate Government.

The United States had within the State of Virginia two valuable possessions, which its revolt threatened with sudden peril, the navy-yard and magazines of Norfolk, and the great arsenal and armoury of Harper's Ferry, situated at the confluence of the Shenandoah and Potomac Rivers, whose united waters here break through the most easterly of the long Alleghany ranges and descend towards the sea. On the night of the 18th April the subaltern in charge of the arsenal was apprised that it was about to be attacked by a strong Virginian force, and hastily withdrew the handful of troops under his command, having first set fire to the buildings, destroyed about 15,000 stand of arms, and attempted, but in vain, to blow up the workshops and machinery. Commodore Macauley, who commanded at Norfolk, had recourse to the same desperate expedient. But here the destruction was greater. The noble harbour of Norfolk,

opening into Hampton Roads, where the James River, on which Richmond stands, discharges itself into the sea, was a naval station of the first importance. Its great navy-yard, on the opposite side of Elizabeth River, gave employment to the populous town of Portsmouth with its suburb, Gosport; and the harbour and yard contained at that time, beside 2,000 pieces or more of heavy ordnance and large quantities of small-arms, ammunition, and naval stores, eight or ten ships of war, of different classes. Of these, however, some were dismantled; one had been thirty-eight years on the stocks, and others were under repair. A subsequent report of the Secretary of the Navy confines the list of those which were or could have been made serviceable to one steam-frigate, three sloops (including the *Cumberland*, which escaped), and a 4-gun brig. Norfolk was occupied on the 20th by a Virginian Brigadier, with a small force hastily collected in the neighbourhood; and, on the same night, the United States' Commandant, who had about 800 men at his disposal, made his escape from Portsmouth, after burning and scuttling the ships, firing the huge ship-houses, and destroying everything else that he could destroy. One sloop of war, the *Cumberland*, was safely towed out by the *Pawnee*, which had arrived just in time. The *Merrimac*, a fine 40-gun steam-frigate, though injured, was rescued by the Confederates, and afterwards did good service as the iron-clad *Virginia;* the cannon and powder also came into their possession, with much valuable machinery and large quantities of shot and shell. Portsmouth was immediately afterwards occupied, as Harper's Ferry had been, by Confederate troops. But Fortress Monroe, a place of great strength and commanding position, remained in the hands of the Federal Government. Seated on the extreme point of the land which divides the James River from Chesapeake Bay, directly opposite to the great outlet between the Capes

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of Virginia into the open sea, this fortress, in the hands of a strong maritime power, controlled the access not only to Richmond, by the James, but to all the interior waters of the bay, and secured to its possessors a foothold, which could not be shaken off, upon all the lower or "tide-water" part of the revolted State.

In the meanwhile, the Confederate Government, which still remained at Montgomery but subsequently removed to Richmond, was preparing, as it best could, to meet the coming storm. On the 6th March the Congress had passed a short Act, by which, "in order to provide, speedily, forces to repel invasion, maintain the rightful possession of the Confederate States of America in every portion of territory belonging to each State, and secure the public tranquillity and independence against threatened assault," the President was authorized to employ the militia, military and naval forces of the Confederacy, and to "ask for and accept the services of any number of volunteers, not exceeding 100,000," to serve for twelve months, unless sooner discharged. This power was exercised immediately after the outbreak of the war;[1] and in the first flush of excitement the efforts of the Administration were seconded, and indeed outrun, by the enthusiasm of the people. "The military spirit raised by President Lincoln's proclamation reached an indescribable state of excitement during the months of April and May. It was estimated that 100,000 men were then organized, armed, and

[1] Mr. Davis's Message, delivered on the 29th April, contained the following passage:—

"There are now in the field at Charleston, Pensacola, Forts Morgan, Jackson, St. Philip, and Pulaski, 19,000 men, and 16,000 are now *en route* for Virginia. It is proposed to organize and hold in readiness for instant action, in view of the present exigencies of the country, an army of 100,000 men. If further force be needed, the wisdom and patriotism of the Congress will be confidently appealed to for authority to call into the field additional numbers of our noble spirited volunteers, who are constantly tendering their services far in excess of our wants."

awaiting orders from the Confederate Government, in the seven States which first seceded. In Virginia 60,000 were under arms. This number included the troops from the other States, together with the militia of Virginia. This latter class were ready and disposed, in all parts of the State, except the western, to turn out almost *en masse*. This enthusiasm, the prosperous condition of the people generally, and the cause of self-defence and self-preservation in which they conceived they were about to fight, rapidly furnished the Government with the men and munitions required."[1] The Virginian troops in the field on the 30th June were reported as 41,885 men, and at the close of the year they were estimated at 70,000.

"For this struggle, so suddenly commenced, Virginia had for some time been making such preparations as her means enabled her, and although she was not so well provided as the Secessionists desired, still she was better prepared than most of her Southern sisters—better, perhaps, than any one of them. For some time anterior to the secession she had been engaged in the purchase of arms of different kinds, ammunition, and other necessary articles, and in mounting artillery, in anticipation of the event which subsequently occurred. A large portion of the ammunition which was used during the year was captured at Norfolk, and the heavy guns supplied to the Southern States for coast, river, and land defence, were captured at the same time with the navy yard. All the field artillery issued belonged exclusively to the State of Virginia, and much the larger part of it had been in her possession for half a century. The small arms were all her own exclusive property, save 7,500 altered percussion muskets, furnished by Governor Ellis, of North Carolina."—*American Annual Cyclopædia* for 1861, p. 740.

Of these levies the larger number were hurried forward, as fast as they could be brought into the field, to the northern frontier of Virginia, and massed so as to resist the approach of an enemy who should attempt to penetrate the State from Maryland. Two armies were thus gradually formed: one, disposed behind the Potomac, occupied the plain and the woody undulating

[1] *American Annual Cyclopædia* for 1861, pp. 146, 147.

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ground which slopes westward to the hills, and which was afterwards the scene of the battle of Manassas Gap or Bull Run; the other, west of the Blue Ridge and, therefore, within the Alleghany ranges, held the line of the Shenandoah, and manœuvred, when it was judged expedient, on that of the Upper Potomac, above Harper's Ferry.

On the 17th April, two days after President Lincoln's call for troops, Mr. Davis issued a Proclamation inviting applications for letters of marque and reprisal:—

"PROCLAMATION.

"Whereas Abraham Lincoln, President of the United States, has by proclamation announced the intention of invading the Confederacy with an armed force for the purpose of capturing its fortresses, and thereby subverting its independence and subjecting the free people thereof to the dominion of a foreign power; and whereas it has thus become the duty of this Government to repel the threatened invasion and defend the rights and liberties of the people by all the means which the laws of nations and usages of civilized warfare place at its disposal.

"Now, therefore, I, Jefferson Davis, President of the Confederate States of America, do issue this my proclamation, inviting all those who may desire by service in private armed vessels on the high seas to aid this Government in resisting so wanton and wicked an aggression, to make application for commissions or letters of marque and reprisal, to be issued under the seal of these Confederate States; and I do further notify all persons applying for letters of marque to make a statement in writing, giving the name and suitable description of the character, tonnage, and force of the vessel, name of the place of residence of each owner concerned therein, and the intended number of crew, and to sign such statement, and deliver the same to the Secretary of State or Collector of the Port of Entry of these Confederate States, to be by him transmitted to the Secretary of State; and I do further notify all applicants aforesaid, that before any commission or letter of marque is issued to any vessel or the owner or the owners thereof and the commander for the time being, they will be required to give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of 5,000 dollars, or, if such vessel be provided with more than 150 men, then in the penal sum of 10,000 dollars, with the condition that the owners, officers, and crew who shall be employed on board such commissioned vessel shall observe the laws of these Confederate States and the instructions given them for the regulation of their conduct, and shall satisfy all damages done contrary to the tenor thereof by such vessel during her commission, and deliver up the same

when revoked by the President of the Confederate States; and I do further specially enjoin on all persons holding offices, civil and military, under the authority of the Confederate States, that they be vigilant and zealous in the discharge of the duties incident thereto; and I do, moreover, exhort the good people of these Confederate States, as they love their country, as they prize the blessings of free Government, as they feel the wrongs of the past and those now threatened in an aggravated form by those whose enmity is more implacable because unprovoked, that they exert themselves in preserving order, in promoting concord, in maintaining the authority and efficacy of the laws, and in supporting and invigorating all the measures which may be adopted for a common defence, and by which, under the blessing of Divine Providence, we may hope for a speedy, just, and honourable peace.

"In witness whereof, I have set my hand and have caused the seal of the Confederate States of America to be attached this 17th day of April, in the year of our Lord, 1861.

(Signed) "JEFFERSON DAVIS."

At the time when this Proclamation was issued, the Confederate Congress was not in Session. It met on the 29th April, and on the 6th May passed an Act "recognizing the Existence of War between the United States and the Confederate States, and concerning Letters of Marque, Prizes, and Prize Goods."[1] This was followed on the 14th May by "An Act regulating the sale of Prizes and the distribution thereof."

On the 19th April the following Proclamation was issued by President Lincoln:—

"PROCLAMATION.

"Whereas an insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States for the collection of the revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States;

"And whereas a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas, and in waters of the United States;

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[1] See Note II at the end of the Chapter.

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"And whereas an Executive Proclamation has been already issued, requiring the persons engaged in these disorderly proceedings to desist therefrom, calling out a militia force for the purpose of repressing the same, and convening Congress in extraordinary session to deliberate and determine thereon:

"Now, therefore, I, Abraham Lincoln, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the Law of Nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave, any of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize as may be deemed advisable.

"And I hereby proclaim and declare that if any person, under the pretended authority of the said States, or under any other pretence, shall molest a vessel of the United States, or the persons or cargo on board of her, such person will be held amenable to the laws of the United States for the prevention and punishment of piracy.

"In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

"Done at the City of Washington, this 19th day of April, in the year our Lord 1861, and of the Independence of the United States the 85th.

(Signed) "ABRAHAM LINCOLN."

The blockade thus declared was extended by Proclamation, on the 27th April, to the ports of North Virginia.

The naval resources of the United States were at this time very limited. At the date of Mr. Lincoln's accession, the whole naval force, excluding ships unfinished or otherwise useless for war, consisted of 69 vessels of all classes, only three of which were of the rank of frigates. Of the 69, 42 only were in commission, and of these again the great bulk were on foreign stations.

The home squadron numbered 12 vessels, carrying 187 guns. The available force was subsequently reduced by the loss of the ships destroyed at Norfolk, and of a steamer seized by the Confederates at Pensacola. This small marine was utterly out of proportion to the demands about to be made on it, and no exertion was spared to increase it as rapidly as possible. The East India, Mediterranean, Brazil, and African squadrons were brought home, ships unfinished were pressed on to completion, a great number of vessels, from first-class steamers to ferry-boats and tug-boats, were bought or chartered, and such as could be made serviceable for enforcing the blockade were manned, armed, and sent with all speed to the South.[1] The naval force employed on this service was divided into two squadrons, one for the Atlantic and the other for the Gulf of Mexico.

Of the blockade itself I shall have occasion to speak hereafter. Here it is enough to say—

1. That it was set on foot, as regards the ports of Virginia, on the 30th April, and was extended to the principal ports of the Atlantic and Gulf coasts before the end of May.

2. That it was enforced from first to last as international blockades are enforced. The rules of international, not of municipal, law were invoked and applied. Neutral ships and cargoes were captured, not only at the mouths of blockaded ports, but on the high seas—an exercise of force which no municipal law can possibly warrant, and which international law permits only in time of war, and to belligerent Powers. And this exercise of power was sustained by the Courts of the

[1] The total number of vessels purchased for the naval service in 1861 was 137; the total number of steamers built and contracted for was 52, of which three were iron-clads. At the close of 1863 the naval force of the United States numbered 588 vessels, complete or in course of completion. Of these 75 were iron-clads.

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United States against the complaints of neutral shipowners and merchants, on the express ground that it was a belligerent right, and that the United States were a belligerent Power.[1]

If at the beginning of the war the naval force at the disposal of the Federal Government was insignificant, compared with the work expected of it and the dimensions it afterwards assumed, it must be added that the revolted States had at the same time no naval force at all. They had, as we have seen, a Naval Department, and had made considerable appropriations for the support of a navy and the purchase of gun-boats, and they had at their command many capable officers who were eager for employment.[2] But they had not a single ship constructed for war, nor had they a large mercantile marine to draw upon. The Southerners were not a seafaring race. Their carrying trade had been divided between foreign shipowners and those of the North; and though their forests yielded ship-timber in abundance, few ships were either built or owned in Southern seaports.[3] All that the Confederate Government could do was to arm as many vessels as it could find, capable of being employed in that predatory warfare which has

[1] See Note I at the end of this Chapter.

[2] Between the 11th November and the 4th March 56 officers of the United States' Navy resigned their commissions. The number of those who resigned or were dismissed between the 4th March and the 4th June was 259.

[3] The tonnage built in Southern ports in 1854 was as follows:—

	Tons.
Virginia	3,228
North Carolina	2,532
South Carolina	1,162
Georgia	667
Florida	562
Alabama	2,000
Louisiana	1,509

The total was less than was built in the small State of New Hampshire alone.

hitherto been sanctioned by the law and practice of nations, and send them to sea as fast as means and opportunity would allow. A long pivot-gun, or a couple of 8-inch columbiads, with a fighting crew, was armament enough for this purpose. Before the end of May several of these troublesome insects were on the wing, and not fewer than twenty prizes had been brought into New Orleans.[1] From thirty to forty armed ships appear to have been fitted out in Confederate ports during the year, of which six or seven had been United States' revenue-cutters, and two or three had been slavers. Some sailed with letters of marque, but many, perhaps the greater number, were owned and commissioned by the Confederate Government. The most powerful was the paddle-wheel steamer *Calhoun*, of 1,058 tons, commanded by Captain Hollins, an officer of some repute in the United States' navy. The smallest, probably, was the tiny *Savannah*, of 54 tons, converted from a Charleston pilot-boat into a privateer. She ran out from Charleston early in June, and succeeded in making one prize; but, closing her career immediately afterwards by mistaking a Federal brig-of-war for a merchantman, was the first Confederate craft that fell into the hands of the enemy.

[1] On the 1st May Mr. Seward wrote to Lord Lyons: "The so-called Confederate States have waged an insurrectionary war against this Government. They are buying, and even seizing, vessels in several places for the purpose of furnishing themselves with a naval force, and they are issuing letters of marque to privateers to be employed in preying upon the commerce of this country. You are aware that the President has proclaimed a blockade of the ports included within the insurgent States. All these circumstances are known to the world."—*Mr. Seward to Lord Lyons*, 1st May, 1861.

"When the Confederate authorities proposed to issue letters of marque but little attention was paid to it, under the supposition that they had neither the facilities to equip vessels, nor the power to break the blockade. The appearance of the vessels on the ocean soon dispelled such illusions, and the Powers of Europe were called upon immediately to define their policy."—*American Annual Cyclopædia* for 1861, p. 589.

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The *Jeff. Davis*, a brig which had formerly been engaged in the slave trade, was more successful in her audacity. She ran northwards early in June, stood in towards shore as near as Nantucket Shoals, took many valuable prizes (one within 200 miles of New York), escaped capture, and in August ran aground and was lost in trying to cross the bar off a little port in Florida. The *Sumter* obtained greater celebrity, and her performances afford us an example of what may be done in this sort of warfare by a ship which has neither strength nor speed, but is in the hands of an officer of daring and resource. She was mentioned by Mr. Davis in his Message of the 29th April, 1861,[1] as being then in preparation; her officers had been appointed to her on the 18th of that month; on the 18th June she was ready for sea, and on the 30th she steamed out of one of the passes of the Mississippi and ran away from the blockading war-steamer *Brooklyn*. She cruised for some time in the West India seas, and afterwards crossed the Atlantic, visiting successively Cienfuegos, Curaçoa, Puerto Cabello in Venezuela, Trinidad, Paramaribo in Dutch Guiana, Maranham in Brazil, Martinique, Cadiz, and Gibraltar, where she was sold, and afterwards came to Liverpool as a merchantman. She cruised for six months and captured seventeen prizes, and succeeded in spreading an alarm which, before November, had raised the rate of insurance on United States' ships. Like the *Calhoun* and *Nashville*, she never was a privateer,

[1] "The operations of the Navy Department have been necessarily restricted by the fact that sufficient time has not yet elapsed for the purchase or construction of more than a limited number of vessels adapted for the public service. Two vessels have been purchased and manned, the *Sumter* and *McRae*, and are now being prepared for sea at New Orleans with all possible despatch. Contracts have also been made at that city with two different establishments for the casting of ordnance,—cannon, shot, and shell,—with the view to encourage the manufacture of these articles, so indispensable for our defence, at as many points within our territory as possible."

and, like them, was commanded by an officer who had held rank in the navy of the United States.

The events of the war in America do not enter into the course of this narrative. I shall merely glance at them. Mr. Lincoln was not long in discovering that in his Proclamation of the 15th April he had taken a very inadequate measure of the resistance with which he had to deal. On the 4th May he issued a second call, asking for forty additional regiments of volunteers, making a maximum aggregate of 42,034 men, to serve for three years, and for 18,000 seamen. He gave orders, at the same time, for an increase of the regular army by ten regiments and a maximum aggregate of 22,714 soldiers. "So patriotic and enthusiastic were the people in favour of preserving the Union that under this call 208 regiments had been accepted by July 1st. A number of other regiments were also accepted on condition of being mustered into service within a specified time."[1] Thus by the 1st July the Government was computed to have at its command not less than 307,875 troops, of whom, however, 77,875 had enlisted for three months, and nearly completed their term of service. From 70,000 to 80,000 men, collected on the line of the Potomac, formed an army destined for the defence of the capital and the invasion of Virginia. But the raw levies which had flocked so fast to Washington needed training in the rudiments of soldiership; means of transport were required, and the other appliances for an army in the field; and during many weeks the Federal forces remained almost inactive within easy distance of the enemy. Towards the end of May, McDowell, under the orders of Scott, began to feel his way into Virginia, and occupied the town of Alexandria, eight miles from Washington, and on the verge of the Federal district; but two months more were

[1] *American Annual Cyclopædia* for 1861, p. 27.

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suffered to elapse before he hazarded an advance. On the Upper Potomac, above Harper's Ferry, Patterson, in command of 20,000 troops, was opposed to the Confederate General Joseph Johnson, by whom he was greatly overmatched in military skill; and Butler, who had been sent by sea, with 15,000 men, to establish himself at Fortress Monroe and menace the surrounding country, had received on the 10th June, in attempting to penetrate inland, a sharp check from a Confederate force under Magruder. At length, on the 16th July, McDowell began to move. Advancing southwards, with an army which may be reckoned at about 35,000 men, he found the enemy strongly posted amidst broken ground, near a point where the southern and western railways intersect, and a line strikes off, through the hills, to the valley of the Shenandoah. Here he fought a pitched battle, sustained a severe defeat, and was driven back in disorder upon Washington.

After this disaster, the command of the army of the Potomac was transferred to General McClellan, who had distinguished himself by a smart and successful campaign in Western Virginia; but no second attempt was made, until the spring of 1862, to advance beyond a day's march from Washington. McClellan occupied himself in drilling and organizing an army which rose by the middle of October to 150,000, and by the end of the year to nearly 220,000 strong.

The coasts of North and South Carolina were visited by Federal squadrons, some forts destroyed, and a permanent lodgment effected at Port Royal; and in Kentucky and Missouri a desultory war was waged, extending over a wide surface, and bringing into the field on both sides forces which in the aggregate were considerable. This, in brief, is the military history of the remainder of the year, which saw, as it wore on, enormous and increasing bodies of combatants drawn

from the pursuits of industry to slaughter one another. The Confederate troops in the field are reckoned to have exceeded 200,000 in August, and 290,000 at a later period. The total strength of the Federal armies on the 1st December was estimated by the War Department at upwards of 660,000 men.[1]

The revolt of the Confederate States has some characteristic features. We cannot fail to be struck by the celerity with which the revolted communities established a regular Government, the long interval which was suffered to elapse before any attempt was made to reconquer them, and the footing of equality on which

[1] The following statement shows the demands made on the North and West up to May 1864:—

1861.

April 15.—Proclamation calling out Militia to the aggregate number of 75,000.

May 3.—Call for 39 volunteer regiments of Infantry, and 1 regiment of Cavalry, with a minimum aggregate of 34,506 officers and men and a maximum of 42,034, and for the enlistment of 18,000 seamen. The President also directs an increase of the regular army by 8 regiments of Infantry, 1 of Cavalry, and 1 of Artillery; minimum aggregate 18,054, maximum 22,714.

July 22 & 25.—Congress authorizes enlistment of 500,000 Volunteers.

1862.

July 2.—Call for 300,000 Volunteers.

August 4.—President orders a draft of 300,000 militia.

1863.

March 3.—Conscription Act.

June 15.—Call for 100,000 men for 6 months to repel the invasion of Maryland, West Virginia, Ohio, and Pennsylvania.

October 17.—Call for 300,000 men to serve for 3 years, or the war.

1864.

February 1.—Draft for 500,000 men for 3 years, or the war.

March 14.—Draft for 200,000 additional men for the army, navy, and marine corps, to supply navy and provide reserve.

April 23.—25,000 one-hundred-day men tendered by Ohio, Indiana, Illinois, Iowa, and Wisconsin, and accepted.

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the combatants met at their first encounter in the field. The explanation of these things is easy, and lies upon the surface of this narrative. The eleven States were completely organized as self-governed communities before they attempted to sever their connection with the Union; as a Confederacy, they had only to reproduce and set in motion a machinery with the working of which they were perfectly familiar, and of which both the model and the materials were ready to their hands. Yet, could the Federal Government have marched an army on Charleston as soon as South Carolina issued her Declaration of Independence, the revolt might have been crushed in its infancy, and the Union might have been saved four years of devastation and carnage. But the Federal Government was paralyzed, not only by its own weakness, but by peculiar restraints and extraordinary difficulties. It had at its disposal no regular army. The regular troops of the United States, in April 1861, numbered barely 16,000, not much more than enough to keep in check the roving Indian tribes of the Far West, which is ordinarily their chief employment. Armies had to be raised on both sides, and they could be raised on one side almost as fast as on the other, though they could not be sustained as long. Further, there is no doubt that the Federal Government was really embarrassed, as I have already said, by that peculiar reluctance to resort to force which an American Government might be expected to entertain. This reluctance—the consciousness that it was generally felt around him—the fear lest an attempt to "invade" should drive (as in fact it did) the Border Slave States, in whom the feeling was most keen and irritable, into open revolt—the hope, which many sensible and experienced men were loth to abandon, that attachment to the Union might yet revive, and the Confederacy, if left to itself, crumble away—these influences speak in Mr. Lincoln's inaugural address, though they can hardly

be said to supply a reasonable account of his policy.[1] Americans have been accustomed to think and speak of their Government as resting altogether on the consent of the governed. It is in truth, more than most others—perhaps more than any, though all are so, more or less—supported by an intelligent opinion, pervading the bulk of the community, that it exists for the general good. But, like every other Government without exception, it is supported also by force; it would, indeed, be no Government, and its laws no laws, if it had not power to compel obedience to its authority, or were not ready, in case of necessity, to exert that power. The necessity came, and was accepted; but it came in the form of a revolt of a large part of the whole population of the Union—a revolt which had attained its full proportions before any attempt was made to subdue it. It had then to be attacked, not as sovereigns suppress insurrections, but as nations wage a great war. Government was confronted with Government; armies were arrayed against armies; the seat of rebellion could only be reached by invading, with all the precautions which invaders use, a hostile territory; resistance could only be overcome, after a long and most obstinate struggle, by a re-conquest so stern and thorough that for years after the contest had ceased all the inhabitants of the South had to be kept under military rule, in the prostrate condition of a subject people.

[1] Mr. Seward (April 10th), after speaking of the manifest instability of the Confederacy, and the President's hope that the Southern people would be wise enough to see it, wrote: "For these reasons he would not be disposed to reject a cardinal doctrine of theirs, namely, that the Federal Government could not reduce the seceding States to obedience by conquest, even although he were disposed to question that proposition. *But, in fact, the President willingly accepts it as true.* Only an imperial or despotic Government could subjugate thoroughly disaffected or revolutionary members of the State. This Federal Republican system of ours is of all forms of government the very one which is most unfitted for such a labour."—*Mr. Seward to Mr. Adams*, 10th April, 1861.

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Opinions of American Courts and American Lawyers on the Question at what date the War ought to be deemed to have begun.

It may be convenient to state here the view taken of the contest by the legal tribunals of the United States. The questions (1), whether it was a war; (2), at what time it become a war; (3), what were its effects (*a*) under the municipal law of the United States on the *status* of citizens and inhabitants of the revolted States, and (*b*) under international law on the rights of foreign Powers and their subjects (questions some of which had previously occupied the District Courts sitting as Courts of Prize), were elaborately discussed and carefully decided by the Supreme Court, in December Term, 1862. This judgment settled the law of the United States on these important questions, and I shall therefore place it under the reader's eye, omitting only such parts of it as dealt with the special circumstances by which the Appellants' Counsel endeavoured to withdraw particular cases from the operation of the general principle.

The "Hiawatha," &c., Prize Cases.—The question was, whether certain vessels and cargoes, some the property of persons resident in the Confederate States, others owned by foreigners, were properly captured for breach of the blockade, instituted under the President's Proclamations of April 1861. All the nine Judges were agreed that the validity of the captures turned on the question whether the President had, in April 1861, "power to set on foot a blockade under the Law of Nations." They were all agreed that he had no such power, unless war existed at the time. On this last point they were divided. Four (including Chief Justice Taney) held that the Federal Courts could not recognize the existence of a public or civil war "carrying with it belligerent rights" until it had been recognized by Congress. They held that it was recognized for the first time by the Act of Congress, 13th July, 1861, and that captures, *jure belli*, made before that Act, must be regarded by the tribunals of the United States as invalid. The propositions contained in the judgment of the majority, which was the judgment of the Court, may be stated as follows:—

1. At and before the date of the President's Proclamation of blockade a war was in existence, under which the Government of the United States was entitled to exercise the *jus belli*, both against its enemy and against neutrals.

2. The "belligerent powers" were the Confederated States on one side, "acting as States" and as a Confederacy, and the United States, claiming sovereignty over the Confederated States, on the other side.

3. The blockade was an act of war instituted *jure belli*, by virtue of a right which had already accrued and which sprang from the existence of a war. The Proclamations did not originate the war, but

recognized it as existing, and must be held "official and conclusive evidence" that it existed.

4. "A civil war"—which this was—"is never formally declared; it becomes such by its accidents,—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory, have declared their independence, have cast off their allegiance, have organized armies, have commenced hostilities against their former Sovereign, the world acknowledges them as belligerents, and the contest as a war."

5. All persons residing in the Confederate States were clothed by the war with the character of public enemies; and their property became liable to capture and confiscation as enemies' property. If actively disloyal to the United States, they were at the same time liable to be punished as traitors.

6. Foreign Powers were clothed by that war with the character of neutrals. British ships and property became neutral ships and property; and the blockade, being instituted *jure belli*, and not as a municipal regulation or mere exercise of public authority within the limits of the United States, might be enforced by the capture of neutral ships and property on the high seas.

I subjoin the judgment itself, extracted from Black's Reports, ii, 665 (*Prize Cases*). The reasons of the dissentient minority, as stated by Mr. Justice Nelson, will be found at p. 686 of the same volume.

Mr. Justice Grier: "There are certain propositions of law which must necessarily affect the ultimate decision of these cases, and many others which it will be proper to discuss and decide before we notice the special facts peculiar to each. They are—

"1. Had the President a right to institute a blockade of ports in possession of persons in armed rebellion against the Government, on the principles of international law, as known and acknowledged among civilized States?

"2. Was the property of persons domiciled or residing within those States a proper subject of capture on the sea as 'enemies' property?'

"I. Neutrals have a right to challenge the existence of a blockade *de facto*, and also the authority of the party exercising the right to institute it. They have a right to enter the ports of a friendly nation for the purposes of trade and commerce, but are bound to recognize the rights of a belligerent engaged in actual war, to use this mode of coercion, for the purpose of subduing the enemy.

"That a blockade *de facto* actually existed, and was formally declared and notified by the President on the 27th and 30th of April, 1861, is an admitted fact in these cases.

"That the President, as the Executive Chief of the Government and Commander-in-Chief of the Army and Navy, was the proper person to make such notification, has not been, and cannot be, disputed.

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"The right of prize and capture has its origin in the *jus belli*, and is governed and adjudged under the law of nations. To legitimate the capture of a neutral vessel or property on the high seas, a war must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory, in possession of the other.

"Let us inquire whether, at the time this blockade was instituted, a state of war existed which would justify a resort to these means of subduing the hostile force.

"War has been well defined to be, 'That state in which a nation prosecutes its right by force.'

"The parties belligerent in a public war are independent nations. But it is not necessary, to constitute war, that both parties should be acknowledged as independent nations or sovereign States. A war may exist where one of the belligerents claims sovereign rights as against the other.

"Insurrection against a Government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the Government. A civil war is never solemnly declared; it becomes such by its accidents.—the number, power, and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their former Sovereign, the world acknowledges them as belligerents, and the contest as a *war*. *They* claim to be in arms to establish their liberty and independence, in order to become a sovereign State; while the sovereign party treats them as insurgents and rebels who owe allegiance, and who should be punished with death for their treason.

"The laws of war, as established among nations, have their foundation in reason, and all tend to mitigate the cruelties and misery produced by the scourge of war. Hence the parties to a civil war usually concede to each other belligerent rights. They exchange prisoners, and adopt the other courtesies and rules common to public or national wars.

"'A civil war,' says Vattel, 'breaks the bands of society and Government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties, therefore, must necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have recourse to arms. This being the case, it is very evident that the common laws of war—those maxims of humanity, moderation, and honour—ought to be observed by both parties in every civil war. Should the Sovereign conceive he has a right to hang up his prisoners as rebels, the opposite party will

make reprisals. &c.; the war will become cruel, horrible, and every day more destructive to the nation.'

"As a civil war is never publicly proclaimed, *eo nomine*, against insurgents, its actual existence is a fact in our domestic history which the Court is bound to notice and to know.

"The true test of its existence, as found in the writings of the sages of the common law, may be thus summarily stated:—'When the regular course of justice is interrupted by revolt, rebellion, or insurrection, so that the Courts of Justice cannot be kept open, civil war exists, and hostilities may be prosecuted on the same footing as if those opposing the Government were foreign enemies invading the land.'

"By the Constitution, Congress alone has the power to declare a national or foreign war. It cannot declare war against a State, or any number of States, by virtue of any clause in the Constitution. The Constitution confers on the President the whole executive power. He is bound to take care that the laws be faithfully executed. He is Commander-in Chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States. He has no power to initiate or declare a war either against a foreign nation or a domestic State. But by the Acts of Congress of February 28th, 1795, and March 3rd, 1807, he is authorized to call out the militia and use the military and naval forces of the United States in case of invasion by foreign nations, and to suppress insurrection against the Government of a State or of the United States.

"If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. And whether the hostile party be a foreign invader, or States organized in rebellion, it is none the less a war, although the declaration of it be 'unilateral.' Lord Stowell (1 Dodson, 247) observes: 'It is not the less a war on that account, for war may exist without a declaration on either side. It is so laid down by the best writers on the law of nations. A declaration of war by one country only, is not a mere challenge to be accepted or refused at pleasure by the other.'

"The battles of Palo Alto and Resaca de la Palma had been fought before the passage of the Act of Congress of 13th May, 1846, which recognized 'a state of war as existing by the act of the Republic of Mexico.' This Act not only provided for the future prosecution of the war, but was itself a vindication and ratification of the act of the President in accepting the challenge without a previous formal declaration of war by Congress.

"This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprang forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it

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presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact.

"It is not the less a civil war, with belligerent parties in hostile array, because it may be called an 'insurrection' by one side, and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted province or State be acknowledged, in order to constitute it a party belligerent in a war according to the law of nations. Foreign nations acknowledge it as war by a declaration of neutrality. The condition of neutrality cannot exist unless there be two belligerent parties. In the case of the *Santissima Trinidad* (7 Wheaton, 337), this Court says: 'The Government of the United States has recognized the existence of a civil war between Spain and her colonies, and has avowed her determination to remain neutral between the parties. Each party is therefore deemed by us a belligerent nation, having, so far as concerns us, the sovereign rights of war.' (See also 3 Binn., 252.)

"As soon as the news of the attack on Fort Sumter, and the organization of a Government by the seceding States, assuming to act as belligerents, could become known in Europe, to wit, on the 13th of May, 1861, the Queen of England issued her proclamation of neutrality, 'recognizing hostilities as existing between the Government of the United States of America and certain States styling themselves the Confederate States of America.' This was immediately followed by similar declarations or silent acquiescence by other nations.

"After such an official recognition by the Sovereign, a citizen of a foreign State is estopped to deny the existence of a war with all its consequences as regards neutrals. They cannot ask a Court to affect a technical ignorance of the existence of a war, which all the world acknowledges to be the greatest civil war known in the history of the human race, and thus cripple the arm of the Government and paralyze its power by subtle definitions and ingenious sophisms.

"The law of nations is also called the law of nature; it is founded on the common consent as well as the common sense of the world. It contains no such anomalous doctrine as that which this Court are now for the first time desired to pronounce, to wit: That the insurgents who have risen in rebellion against their Sovereign, expelled her Courts, established a Revolutionary Government, organized armies, and commenced hostilities, are not enemies because they are traitors, and a war levied on the Government by traitors, in order to dismember and destroy it, is not a war because it is an 'insurrection.'

"Whether the President, in fulfilling his duties, as Commander-in-chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions, as will compel him to accord to them the character of belligerents, is a question to be decided by him, and this Court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted. 'He must determine what degree of force the crisis demands.' The proclamation of the blockade is itself official and

conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances peculiar to the case.

"The correspondence of Lord Lyons with the Secretary of State admits the fact and concludes the question.

"If it were necessary to the technical existence of a war that it should have a legislative sanction, we find it in almost every Act passed at the Extraordinary Session of the Legislature of 1861, which was wholly employed in enacting laws to enable the Government to prosecute the war with vigour and efficiency. And finally, in 1861, we find Congress *ex majore cautela* and in anticipation of such astute objections, passing an Act 'approving, legalizing, and making valid all the acts, proclamations, and orders of the President, &c., as if they had been issued and done under the previous express authority and direction of the Congress of the United States.'

"Without admitting that such an Act was necessary under the circumstances, it is plain that, if the President had in any manner assumed powers which it was necessary should have the authority or sanction of Congress, on the well-known principle of law, *omnis ratihabitio retrotrahitur et mandato æquiparatur*, this ratification has operated to perfectly cure the defect. In the case of *Brown* v. *United States* (8 Cranch, 131, 132, 133), Mr. Justice Story treats of this subject, and cites numerous authorities to which we may refer to prove this position, and concludes: 'I am perfectly satisfied that no subject can commence hostilities or capture property of an enemy, when the Sovereign has prohibited it. But suppose he did, I would ask if the Sovereign may not ratify his proceedings, and thus by a retroactive operation give validity to them?'

"Although Mr. Justice Story dissented from the majority of the Court on the whole case, the doctrine stated by him on this point is correct and fully substantiated by authority.

"The objection made to this act of ratification, that it is *ex post facto*, and therefore unconstitutional and void, might possibly have some weight on the trial of an indictment in a Criminal Court. But precedents from that source cannot be received as authoritative in a tribunal administering public and international law.

"On this first question therefore we are of the opinion that the President had a right, *jure belli*, to institute a blockade of ports in possession of the States in rebellion, which neutrals are bound to regard.

"II. We come now to the consideration of the second question. What is included in the term 'enemies' property?'

"Is the property of all persons residing within the territory of the States now in rebellion, captured on the high seas, to be treated as 'enemies' property' whether the owner be in arms against the Government or not?

"The right of one belligerent not only to coerce the other by direct

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force, but also to cripple his resources by the seizure or destruction of his property, is a necessary result of a state of war. Money and wealth, the products of agriculture and commerce, are said to be the sinews of war, and as necessary in its conduct as numbers and physical force. Hence it is, that the laws of war recognize the right of a belligerent to cut these sinews of the power of the enemy, by capturing his property on the high seas.

"The Appellants contend that the term 'enemy' is properly applicable to those only who are subjects or citizens of a foreign State at war with our own. They quote from the pages of the Common Law, which say, 'that persons who wage war against the King may be of two kinds, subjects or citizens. The former are not proper enemies, but rebels and traitors; the latter are those that come properly under the name of enemies.'

"They insist, moreover, that the President himself, in his Proclamation, admits that great numbers of the persons residing within the territories in possession of the Insurgent Government, are loyal in their feelings, and forced by compulsion and the violence of the rebellious and revolutionary party and its '*de facto* Government' to submit to their laws and assist in their scheme of revolution; that the acts of the usurping Government cannot legally sever the bond of their allegiance; they have, therefore, a co-relative right to claim the protection of the Government for their persons and property, and to be treated as loyal citizens, till legally convicted of having renounced their allegiance and made war against the Government by treasonably resisting its laws.

"They contend, also, that insurrection is the act of individuals, and not of a Government or Sovereignty. That the individuals engaged are subjects of law. That confiscation of their property can be effected only under a municipal law. That by the law of the land such confiscation cannot take place without the conviction of the owner of some offence, and finally that the Secession Ordinances are nullities and ineffectual to release any citizen from his allegiance to the national Government, and consequently that the Constitution and laws of the United States are still operative over persons in all the States, for punishment as well as protection.

"This argument rests on the assumption of two propositions, each of which is without foundation in the established law of nations. It assumes that where a civil war exists, the party belligerent, claiming to be Sovereign, cannot, for some unknown reason, exercise the rights of belligerents, although the revolutionary party may. Being Sovereign, he can exercise only sovereign rights over the other party. The insurgent may be killed on the battle-field or by the executioner; his property on land may be confiscated under the municipal law; but the commerce on the ocean, which supplies the rebels with means to support the war, cannot be made the subject of capture under the laws of war, because it is 'unconstitutional.' Now, it is a proposition never doubted, that the belligerent party who claims to be Sovereign, may exercise both belli-

gerent and sovereign rights (see 4 Cranch, 272). Treating the other party as a belligerent and using only the milder modes of coercion which the law of nations has introduced to mitigate the rigours of war, cannot be a subject of complaint by the party to whom it is accorded as a grace or granted as a necessity. We have shown that a civil war such as that now waged between the Northern and Southern States is properly conducted according to the humane regulations of public law as regards capture on the ocean.

"Under the very peculiar Constitution of this Government, although the citizens owe supreme allegiance to the Federal Government, they owe also a qualified allegiance to the State in which they are domiciled. Their persons and property are subject to its laws.

"Hence, in organizing this rebellion, they have acted as States claiming to be Sovereign over all persons and property within their respective limits, and asserting a right to absolve their citizens from their allegiance to the Federal Government. Several of these States have combined to form a new Confederacy, claiming to be acknowledged by the world as a sovereign State. Their right to do so is now being decided by wager of battle. The ports and territory of each of these States are held in hostility to the General Government. It is no loose, unorganized insurrection, having no defined boundary or possession. It has a boundary marked by lines of bayonets, and which can be crossed only by force; south of this line is enemies' territory, because it is claimed and held in possession by an organized, hostile, and belligerent power.

"All persons residing within this territory whose property may be used to increase the revenues of the hostile power are, in this contest, liable to be treated as enemies, though not foreigners. They have cast off their allegiance and made war on their Government, and are none the less enemies because they are traitors.

"But in defining the meaning of the term 'enemies' property,' we will be led into error if we refer to Fleta and Lord Coke for their definition of the word 'enemy.' It is a technical phrase peculiar to Prize Courts, and depends upon the principles of public policy as distinguished from the Common Law.

"Whether property be liable to capture as 'enemies' property' does not in any manner depend on the personal allegiance of the owner. 'It is the illegal traffic that stamps it as "enemies' property." It is of no consequence whether it belongs to an ally or a citizen. (8 Cranch, 384.) The owner, *pro hac vice*, is an enemy.' (3 Wash. C. C. R., 183.)

"The produce of the soil of the hostile territory, as well as other property engaged in the commerce of the hostile power, as the source of its wealth and strength, are always regarded as legitimate prize, without regard to the domicil of the owner, and much more so if he reside and trade within their territory.

"III. We now proceed to notice the facts peculiar to the several

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cases submitted for our consideration. The principles which have just been stated apply alike to all of them. . . . . ."

The Tropic Wind.—A decision to the same effect had been pronounced on the 17th June, 1861, by the Judge of the District Court of the United States for the District of Columbia, in the case of the British schooner *Tropic Wind*, captured on the 21st May.

" The President," said the Judge, " in his Proclamation relating to the blockade of the ports of the Confederate States, calling out 75,000 Militia to suppress insurrection and the resistance to the Federal laws, alleges, 'that nine States have so resisted,' and have 'threatened to issue letters of marque, to authorize the bearers thereof to commit assaults against the vessels, property, and lives of citizens engaged in commerce on the high seas and in the waters of the United States; that public property of the United States has been seized, the collection of the revenue obstructed, and duly commissioned officers of the United States, while engaged in executing the orders of their superiors, have been arrested and held in custody as prisoners, or have been impeded in the discharge of their official duties, without due legal process, by persons claiming to act under authorities of the States of Virginia and North Carolina.'

" These facts, so set forth by the President, with the assertion of the right of blockade, amount to a declaration that civil war exists.

" Blockade itself is a belligerent right, and can only legally have place in a state of war; and the notorious fact that immense armies in our immediate view are in hostile array against each other in the Federal and Confederate States, the latter having organized a Government, and elected officers to administer it, attest the executive declaration that civil war exists; a sad war, which, if it must go on, can only be governed by the laws of war, and its evils mitigated by the principles of clemency engrafted upon the war code by the civilization of modern times."

The Amy Warwick.—" In addition," said Judge Sprague, in the case of the *Amy Warwick*, " to other important acts, the President, by Proclamation of the 27th of April, established a blockade of the ports of Virginia. This was the exercise of a great belligerent right, and could have been done under no other. He could not prohibit or restrict the commerce of any State by a mere municipal regulation. The blockade was avowedly established as a belligerent act under the law of nations; and it was accordingly announced that it would be rendered effective by an adequate naval force, and in all proceedings in relation to it by our own country and other nations it has been regarded as a belligerent act. . . That the United States in this war has on the ocean all the rights of belligerents, has never been distinctly controverted. To deny it is to break up the blockade, and every condemnation under it."

" I understand and agree," said Mr. Evarts, arguing as Counsel for

the United States in the prosecution of the crew of the *Savannah*, "that for certain purposes there is a condition of war which forces itself on the attention and duty of Governments, and calls on them to exert the power and force of war for their protection and maintenance. . . . Nor, gentlemen, have I ever denied, nor shall I here deny, that when the proportions of a civil dissension or controversy came to the port and dignity of war, good sense and common intelligence require the Government to recognize it as a question of fact according to the actual circumstances of the case, and to act accordingly. I, therefore, have no difficulty in conceding that outside of any question of law and right—outside of any question as to whether there is a Government down there, whether nominal or real, or that can be described as having any consistency of any kind under our law and Government—there is prevailing in this country a controversy which is carried on by the methods and which has the proportions and extent of what we call war. And I admit that if this Government of ours were not a party to this controversy—if it looked at it from the outside, as England and France have done—our Government would have had the full right to treat these contending parties in its courts and before its laws as belligerents engaged in hostilities, as it would have had an equal right to take the opposite course."

The reader may further consult an able pamphlet by a lawyer, highly esteemed in this country as well as in the United States—Mr. Whiting: *The War Powers of the President, and the Legislative Powers of Congress in relation to Rebellion, Treason, and Slavery.* (Boston: Seventh edition, 1863.)

Mr. Whiting observes, p. 45: "The Government have in fact treated the insurgents as belligerents without recognizing them in express terms as such. They have received the capitulation of rebels at Hatteras, as prisoners of war, 'in express terms,' and have exchanged prisoners of war as such, and have blockaded the coast by military authority, and have officially informed other nations of such blockade, and of their intention to make it effective, under the present law of nations. They have not exercised their undoubted right to repeal the laws making either of the blockaded harbours ports of entry. They have relied solely on their 'belligerent' rights, under the law of nations."

It would be a correct account, probably, of the law of the United States as interpreted by the Supreme Court to say that, as regards inhabitants of the Confederate States, the rights of citizenship were suspended during the revolt, but not its obligations. Such persons, taken in arms against the Union, would have been held punishable as offenders against its laws. In the case of the crew of the *Savannah*, captured on the 3rd June, 1861, and in that of William Smith, one of the crew of the *Jeff. Davis*, taken prisoner on board of the schooner *Enchantress*, a re-captured prize, no doubt was entertained on that head. But the

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crew of the *Savannah* were not, in fact, punished as malefactors, the proceedings against them being dropped, after a trial in which the jury were unable to agree upon a verdict; nor was Smith himself, though against him a conviction was obtained. They were transferred, under an order issued to the marshals in whose keeping they were by the Secretary of State, to a military prison, where they were detained as prisoners of war. The Confederate Government had threatened retaliation, and would certainly have executed the threat. To avoid this, as well as on general grounds of humanity, men taken in arms were throughout the contest treated as prisoners of war, and exchanges were effected by means of cartel arrangements between the Generals in command.

Some difference of opinion has existed, and, I believe, still exists, as to the time at which the state of war, with the rights which it conferred on the United States as against the people of the South, ought to be deemed to have terminated. The continued existence of those rights has been regarded as justifying the Reconstruction Acts, the Act of the 2nd March, 1867, by which the Southern States were parcelled out into military districts and placed under military control, and the exercise of military jurisdiction in those States. Upon this head the reader may refer to the opinion of Attorney-General Hoar on the case of Weaver, tried and sentenced by a military tribunal in 1868 (in which Mr. Hoar speaks of the war as having been a war between the States "as organized communities," and the United States), and the case of *Semmes* v. *City Fire Insurance Company*, in the United States' Circuit Court, *American Law Review*, October 1869.

Note II.

Note II.

An Act recognizing the Existence of War between the United States and the Confederate States; and concerning Letters of Marque, Prizes, and Prize Goods.

(*Passed by the Congress of the Confederate States, 6th May*, 1861).

"Whereas the earnest efforts made by the Government to establish friendly relations between the Government of the United States and the Confederate States, and to settle all questions of disagreement between the two Governments upon principles of right, justice, equity, and good faith, have proved unavailing by reason of the refusal of the Government of the United States to hold any intercourse with the commissioners appointed by this Government for the purposes aforesaid, or to listen to any proposals they had to make for the peaceful solution of all causes of difficulty between the two Governments: and whereas the President of the United States of America has issued his proclamation making requisition upon the States of the American Union for 75,000 men for the purpose, as therein indicated, of capturing forts and other strongholds within the jurisdiction of and belonging to the Confederate States of

America, and has detailed naval armaments upon the coasts of the Confederate States of America, and raised, organized, and equipped a large military force to execute the purpose aforesaid, and has issued his other proclamation announcing his purpose to set on foot a blockade of the ports of the Confederate States: and whereas the State of Virginia has seceded from the Federal Union and entered into a convention of alliance offensive and defensive with the Confederate States, and has adopted the Provisional Constitution of the said States, and the States of Maryland, North Carolina, Tennessee, Kentucky, Arkansas, and Missouri have refused, and it is believed that the State of Delaware and the inhabitants of the the territories of Arizona and New Mexico, and the Indian territory South of Kansas, will refuse, to co-operate with the Government of the United States in these acts of hostilities and wanton aggression, which are plainly intended to overawe, oppress, and finally subjugate the people of the Confederate States: and whereas, by the acts and means aforesaid, war exists between the Confederate States and the Government of the United States and the States and territories thereof, except the States of Maryland, North Carolina, Tennessee, Kentucky, Arkansas, Missouri, and Delaware, and the territories of Arizona and New Mexico, and the Indian territory South of Kansas: therefore,—

"1. The Congress of the Confederate States of America do enact, That the President of the Confederate States is hereby authorized to use the whole land and naval force of the Confederate States to meet the war thus commenced, and to issue to private armed vessels commissions, or letters of marque and general reprisal, in such form as he shall think proper under the seal of the Confederate States, against the vessels, goods, and effects of the Government of the United States, and of the citizens or inhabitants of the States and territories thereof: Provided however, That property of the enemy (unless it be contraband of war) laden on board a neutral vessel shall not be subject to seizure under this Act: And provided further, That vessels of the citizens or inhabitants of the United States now in the ports of the Confederate States, except such as have been since the 5th of April last, or may hereafter be, in the service of the Government of the United States, shall be allowed thirty days after the publication of this Act to leave said ports and reach their destination; and such vessels and their cargoes, excepting articles contraband of war, shall not be subject to capture under this Act during said period, unless they shall have previously reached the destination for which they were bound on leaving said ports.

"2. That the President of the Confederate States shall be, and he is hereby, authorized and empowered to revoke and annul, at pleasure, all letters of marque and reprisal which he may at any time grant pursuant to this Act.

"3. That all persons applying for letters of marque and reprisal pursuant to this Act shall state in writing the name and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, and the intended number

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of the crew; which statement shall be signed by the person or persons making such application, and filed with the Secretary of State, or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the Secretary of State.

"4. That before any commission or letters of marque and reprisal shall be issued as aforesaid, the owner or owners of the ship or vessel for which the same shall be requested, and the commander thereof for the time being, shall give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of 5,000 dollars, or if such vessel be provided with more than 150 men, then in the penal sum of 10,000 dollars, with condition that the owners, officers, and crew who shall be employed on board such commissioned vessel, shall and will observe the laws of the Confederate States, and the instructions which shall be given them according to law for the regulation of their conduct, and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof by such vessel during her commission, and to deliver up the same when revoked by the President of the Confederate States.

"5. That all captures and prizes of vessels and property shall be forfeited and shall accrue to the owners, officers, and crews of the vessels by whom such captures and prizes shall be made, and, on due condemnation had, shall be distributed according to any written agreement which shall he made between them; and if there be no such written agreement, then one moiety to the owners and the other moiety to the officers and crew, as nearly as may be, according to the rules prescribed for the distribution of prize money by the laws of the Confederate States.

"6. That all vessels, goods, and effects, the property of any citizen of the Confederate States, or of persons resident within and under the protection of the Confederate States, or of persons permanently within the territories and under the protection of any foreign prince, Government, or State in amity with the Confederate States, which shall have been captured by the United States, and which shall be re-captured by vessels commissioned as aforesaid, shall be restored to the lawful owners, upon payment by them of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court having jurisdiction, according to the nature of each case, agreeably to the provisions established by law. And such salvage shall be distributed among the owners, officers, and crews of the vessels commissioned as aforesaid, and making such captures, according to any written agreement which shall be made between them; and in case of no such agreement, then in the same manner and upon the principles hereinbefore provided in cases of capture.

"7. That before breaking bulk of any vessel which shall be captured as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such captured vessel, goods, or effects shall be brought into some port of the Confederate States, or of a nation or State in amity with the Confederate States, and shall be

proceeded against before a competent tribunal; and after condemnation and forfeiture thereof shall belong to the owners, officers, and crew of the vessel capturing the same, and be distributed as before provided; and in the case of all captured vessels, goods, and effects which shall be brought within the jurisdiction of the Confederate States, the district courts of the Confederate States shall have exclusive original cognizance thereof, as the civil causes of Admiralty and Maritime jurisdiction; and the said courts, or the courts, being courts of the Confederate States, into which such cases shall be removed, and in which they shall be finally decided, shall and may decree restitution in whole or in part, when the capture shall have been made without just cause. And if made without probable cause, may order and decree damages and costs to the party injured, for which the owners and commanders of the vessels making such captures, and also the vessels, shall be liable.

"8. That all persons found on board any captured vessel, or on board any re-captured vessel, shall be reported to the collector of the port in the Confederate States in which they shall first arrive, and shall be delivered into the custody of the marshal of the district, or some court or military officer of the Confederate States, or of any State in or near such port, who shall take charge of their safe keeping and support, at the expense of the Confederate States.

"9. That the President of the Confederate States is hereby authorized to establish and order suitable instructions for the better governing and directing the conduct of the vessels so commissioned, their officers and crews, copies of which shall be delivered by the collector of the customs to the commanders, when they shall give bond as provided.

"10. That a bounty shall be paid by the Confederate States of 20 dollars for each person on board any armed vessel belonging to the United States at the commencement of an engagement, which shall be burnt, sunk, or destroyed by any vessel commissioned as aforesaid, which shall be of equal or inferior force, the same to be divided as in other cases of prize money; and a bounty of 25 dollars shall be paid to the owners, officers, and crews of the private armed vessels commissioned as aforesaid, for each and every prisoner by them captured and brought into port, and delivered to an agent authorized to receive them, in any port of the Confederate States; and the Secretary of the Treasury is hereby authorized to pay or cause to be paid to the owners, officers, and crews of such private armed vessels commissioned as aforesaid, or their agent, the bounties herein provided.

"11. That the commanding officer of every vessel having a commission or letters of marque and reprisal during the present hostilities between the Confederate States and the United States shall keep a regular journal, containing a true and exact account of his daily proceedings and transactions with such vessel and the crew thereof; the ports and places he shall put into or cast anchor in; the time of his stay there and the cause thereof; the prizes he shall take, and the nature and probable

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value thereof; the times and places when and where taken, and in what manner he shall dispose of the same; the ships or vessels he shall fall in with; the times and places when and where he shall meet with them, and his observations and remarks thereon; also of whatever else shall occur to him, or any of his officers or marines, or be discovered by examination or conference with any marines or passengers of or in any other ships or vessels, or by any other means, touching the fleets, vessels and forces of the United States, their posts and places of station and destination, strength, numbers, intents and designs; and such commanding officer shall, immediately on his arrival in any port of the Confederate States, from or during the continuance of any voyage or cruise, produce his commission for such vessel, and deliver up such journal so kept as aforesaid, signed with his proper name and handwriting, to the collector or other chief officer of the customs at or nearest to such port; the truth of which journal shall be verified by the oath of the commanding officer for the time being. And such collector or other chief officer of the customs shall, immediately on the arrival of such vessel, order the proper officer of the customs to go on board and take an account of the officers and men, and number and nature of the guns, and whatever else shall occur to him on examination material to be known; and no such vessel shall be permitted to sail out of port again until such journal shall have been delivered up, and a certificate obtained under the hand of such collector or other chief officer of the customs that she is manned and armed according to her commission, and, upon delivery of such certificate, any former certificate of a like nature which shall have been obtained by the commander of such vessel shall be delivered up.

"12. That the commanders of vessels having letters of marque and reprisal as aforesaid, neglecting to keep a journal as aforesaid, or wilfully making fraudulent entries therein or obliterating the record of any material transaction contained therein, where the interest of the Confederate States is concerned, or refusing to produce and deliver such journal, commission, or certificate, pursuant to the preceding section of this Act, then and in such cases the commissions or letters of marque and reprisal of such vessels shall be liable to be revoked; and such commanders respectively shall forfeit for every such offence the sum of 1,000 dollars, one moiety thereof to the use of the Confederate States, and the other to the informer.

"13. That the owners or commanders of vessels having letters of marque and reprisal as aforesaid, who shall violate any of the Acts of Congress for the collection of the revenue of the Confederate States, and for the prevention of smuggling, shall forfeit the commission or letters of marque and reprisal, and they and the vessels owned or commanded by them shall be liable to all the penalties and forfeitures attaching to merchant-vessels in like cases.

"14. That on all goods, wares, and merchandize captured and made good and lawful prizes of war by any private armed ship having commission or letters of marque and reprisal under this Act, and brought

into the Confederate States, there shall be allowed a deduction of $33\frac{1}{3}$ per cent on the amount of duties imposed by law.

"15. That five per centum on the net amount (after deducting all charges and expenditures) of the prize money arising from captured vessels and cargoes, and on the net amount of the salvage of vessels and cargoes re-captured by private armed vessels of the Confederate States, shall be secured and paid over to the collector or other chief officer of the customs, at the port or place in the Confederate States at which such captured or re-captured vessels may arrive, or to the Consul or other public agent of the Confederate States residing at the port or place, not within the Confederate States, at which such captured or re-captured vessel may arrive. And the moneys arising therefrom shall be held and are hereby pledged by the Government of the Confederate States as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of sueh persons as may be wounded and disabled, on board of the private armed vessels commissioned as aforesaid, in any engagement with the enemy, to be assigned and distributed in such manner as shall hereafter be provided by law."

CHAPTER V.

General Remarks on the effect of a Civil War on International Relations.—Sovereignty, what it is, and how affected by a Revolt.—Sovereignty *de jure* and *de facto*.—Effect of a Revolt, while it lasts, in displacing assumptions common to Municipal and International Law.—Difficulties thus created, and how they are met.—Neutrality of Foreign States during a Civil War.—Belligerent Rights, what they are, when they arise and expire, and on what ground the recognition of them proceeds.—A Rebel not a Pirate.

We have reached a point at which the revolt and its consequences began to affect the international relations of the United States with other Powers. We are on the confines, therefore, of the domain of International Law; and it may be convenient that, before going further, I should attempt to state, as clearly and concisely as I am able, some simple propositions which meet us at the outset.

The collection of rules called International Law assigns to all Sovereign States certain rights and obligations. These rules are, in fact, opinions which have acquired a force analogous to that of laws from their general acceptance, from having been often acted upon, and from the sense that the recognition of some fixed standards for the regulation of conduct and the adjustment of disputes is a matter of great and universal convenience. When we speak of an international obligation, we mean that there is a rule which, as between nations, enjoins or forbids a given act, and that this rule is the accepted measure, so far as it goes, of what is just or unjust in a given case. The force of the rule, whatever it be and from whatever source derived, constitutes

the obligation, and every nation against which the rule may be invoked is said to be bound or obliged by it. By an international right we mean a claim to the performance of an international obligation.

By a Sovereign State we mean a community or number of persons permanently organized under a Sovereign Government of their own; and by a Sovereign Government we mean a Government, however constituted, which exercises the power of making and enforcing law within a community, and is not itself subject to any superior Government. These two factors, one positive, the other negative—the exercise of power, and the absence of superior control—compose the notion of sovereignty, and are essential to it. The question whether a given community is a Sovereign State, and the question who is or are sovereign in a given community, are thus, properly speaking, pure questions of fact.

The rebellion of part of a community against the Sovereign Government has the effect, while it lasts, of paralyzing or suspending the actual sovereignty of the Government as to the rebellious part. If successful, it has the further effect of substituting a new Government without impairing the integrity of the State, or else of dividing the community itself into more States than one. A new State thus created has the same general rights and obligations as others, and is entitled to have them acknowledged, since the reasons on which those rights and obligations depend are good for all States indiscriminately, without reference to their origin; and it is, as we have seen, only a question of fact whether a community which lays claim to the character of a State be such or no. An acknowledgment by other States that this character has actually been acquired by a revolted community, is usually spoken of as a recognition of its independence.

Isolated acts of resistance to the law, local risings

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soon suppressed, do not suspend or interrupt the sovereignty of the Government. The power is there; all that is necessary is to exert it.

Sovereignty, independence, subjection, are permanent conditions, though the degree of permanence is incapable of precise definition. A revolted community seldom succeeds in establishing a Government, and achieving independence, at a blow; and some time must usually elapse before it can be safely and prudently recognized as independent by other nations. There is commonly a period of transition and struggle, until the expiration of which it is uncertain whether the old state of things will be re-established or no. During this period the sovereignty of the original Government over its refractory subjects has really ceased to exist, for power which cannot be exercised is not power: there remains only the hope or expectation that it will be restored, coupled in the minds of its adherents with the opinion that it ought to be restored—an opinion which is expressed by the phrase "Sovereignty *de jure*." A *de jure* Government is one which, in the opinion of the person using the phrase, ought to possess the powers of sovereignty, though at the time it may be deprived of them. A *de facto* Government is one which is really in possession of them, although the possession may be wrongful or precarious.

This is a period in which troublesome questions are likely to arise, both in respect of the administration of law within the country thus divided against itself and in respect of its international relations. For both municipal and international law assume, as they necessarily must, the existence in every State of a Government exercising a reasonable and substantial, though not an absolute, control within every part of its dominions; and on this basis all their rules are framed. But this assumption may be displaced in particular cases, just as the analogous assumption, common to all law whatsoever, that men are masters of their own actions, is displaced in

cases where the mind is unhinged and the understanding clouded by disease. Here is a Government, supposed to be sovereign, at war with those who are supposed to be its subjects; here is a body of people supposed to be subject to a Sovereign against whom they are fighting with all their might, and who is fighting with all his might against them. Such anomalies baffle the application of general rules; and, in order to provide for them without breaking in more than is absolutely necessary on the rule itself, nations and Governments have had recourse to shifts and expedients.

Thus it is clear—although courts of justice may shut their eyes to it—that the character of a subject or citizen of a State, and that of a public enemy of the same State, are really incompatible with one another. Yet it has been decided, as we have already seen, in the Supreme Court of the United States, not only that the same person may be both a citizen and a public enemy, but that this double character belonged in fact to all persons residing in the Confederate States, whether they had personally shared in the revolt or no. Their *status*, in the view of the law, was changed by the acts of others, in which they had not participated. A citizen is entitled to claim, for his property as well as his person, the protection of the law, and is liable to punishment for breaking the law; a public enemy, as such, is exempt from that liability, and has no claim to that protection. Loyal Southerners, resident in the South, though regarded by the law as citizens, were placed, as regards their property, out of the pale of its protection; disloyal Southerners, taken in arms against the United States, though regarded by the law as malefactors, were not punished as such, but detained and exchanged as prisoners of war. Further, the Federal Courts, whilst regarding the Governments of the revolted States as unlawful because in open rebellion, have recognized the fact that they were really Governments in a country where there was no other, and

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have regarded their acts as valid, so far as those acts were unconnected with the rebellion.[1]

If it is found in practice that considerations, too powerful to be resisted, force such expedients and compromises as these on the authorities whose duty it is to compel obedience to the laws; it would certainly be very unreasonable to expect foreign nations, who are under no such obligation, to apply a more rigid rule. The practice of nations does not require this of them. As long as it is uncertain whether the new Government will succeed in establishing its independence, it is usual for them to abstain from official intercourse with it. But the existence of a large body of people yielding

[1] In the case of *Texas* v. *White* (Wallace, vii, 700), the question arose whether a sale during the war, under the authority of the Texas Legislature, of certain United States' Bonds, transferable by delivery and belonging to the State of Texas, was valid. In the course of the judgment, delivered by Chief Justice Chase, the Court made the following observations:—

"The Legislature of Texas, at the time of the repeal, constituted one of the Departments of a State Government established in hostility to the Constitution of the United States. It cannot be regarded, therefore, in the Courts of the United States as a lawful legislature, or its acts as lawful acts. And yet it is a historical fact that the Government of Texas, then in full control of the State, was its only actual Government; and certainly, if Texas had been a separate State and not one of the United States, the new Government, having displaced the regular authority, and having established itself in the customary seats of power and in the exercise of the ordinary functions of administration, would have constituted, in the strictest sense of the word, a *de facto* Government; and its acts, during the period of its existence as such, would be effectual, and in almost all respects valid. And to some extent, this is true of the actual Government of Texas, though unlawful and revolutionary as to the United States.

"It is not necessary to attempt any exact definitions within which the acts of such a State Government must be treated as valid or invalid. It may be said, however, that Acts necessary to peace and good order among citizens, such for example as Acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual though unlawful

obedience to no recognized Government, and therefore formally shut out from the pale of public law, is in itself an evil, and may be a source of grave inconveniences. If such persons commit wrongful acts against the subjects of other States, to whom is complaint to be made, and who is responsible? Their original Sovereign? But he is helpless; no redress can be obtained from him; and he would refuse, with justice, to be answerable for the misdeeds of those who are wholly beyond his control. Foreign nations, which must for awhile endure these inconveniences, have a right to protect themselves and their subjects against them in every reasonable way. In-

Government, and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must in general be regarded as invalid and void."

Applying this test, the Court held the sale invalid as against the State of Texas.

In *Thorington* v. *Smyth and Hartley*, decided by the Supreme Court in December 1868, it was held that, where a contract had been made in Alabama during the war for the purchase of an estate, the price to be paid in Confederate notes, a Bill to enforce the vendor's lien for the unpaid purchase-money could be sustained, after the restoration of peace, in a Court of the United States.

"It is familiar history," said Chief Justice Chase, "that early in 1861 the authorities of seven States, supported as was alleged by popular majorities, combined for the overthrow of the national Union, and for the establishment within its boundaries of a separate and independent Confederation. A governmental organization representing these States was established at Montgomery, in Alabama, first under a Provisional Constitution, and afterwards under a Constitution intended to be permanent. In the course of a few months four other States acceded to this Confederation, and the seat of the central authority was transferred to Richmond, in Virginia. It was by the central authority thus organized, and under its direction, that civil war was carried on upon a vast scale against the Government of the United States for more than four years. Its power was recognized as supreme in nearly the whole of the territory of the States confederated in insurrection. It was the actual Government of all the insurgent States, except those portions of them protected from its control by the presence of the armed forces of the national Government." The precise character of such a Government, the Court proceeded, can

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formal communications, exchanged as occasion may arise, with the persons who actually exercise control within the revolted community, are among the means of doing this. It is an expedient, however, which like most temporary makeshifts, is troublesome and imperfect. As to the contest itself, it is to foreign Powers a war in which they are neutral; the contending parties—two portions of a people with the whole of which they have been accustomed to live in friendship—are to them two belligerents, between whom they have to hold an even hand.

Neutrality, in wars which do not extend to the

hardly be defined with exactness. It was a *de facto* Government; but not "such a Government in its highest degree." This exists where a usurper has succeeded not only in establishing his power over particular localities, but in gaining actual possession of the whole authority of the Sovereign. It was analogous rather to cases in which a temporary but complete authority over part of a country is established by conquest. (*United States* v. *Rice*, Wheaton's R., iv, 253; *Fleming* v. *Page*, Howard's R., ix, 614.) The Government here "did not indeed originate in lawful acts of regular war, but it was not on that account less actual or less supreme. It is to be observed that the rights and obligations of a belligerent were conceded to it in its military character very soon after the war began, from motives of humanity and expediency, by the United States. The whole territory controlled by it was thereafter held to be enemies' territory, and the inhabitants of that territory were held to be in most respects enemies. To the extent, then, of actual supremacy, however gained, in all matters of government within its military lines, the power of the insurgent Government cannot be questioned. That supremacy did not justify acts of hostility to the United States. How far it should excuse them must be left to the lawful Government upon the re-establishment of its authority. But it made obedience to its authority in civil and local matters not only a necessity but a duty; without such obedience civil order was impossible." Hence, although notes of the Confederate Government were, as contracts, mere nullities, they must be regarded as having constituted, while the revolt lasted, the actual currency of the Confederate States, exactly as if they had been issued by a foreign Government temporarily occupying the territory of those States. Contracts, therefore, made in that currency ought to be enforced "after the restoration of peace," and the vendor was held entitled to recover "the actual value of the notes at the time and place of the contract in lawful money of the United States."

sea, is for the most part a merely negative condition: it is abstinence from active participation in a strife with which the neutral can rarely be brought into contact against his will. But maritime hostilities are waged on the common highway of nations, in the midst of peaceful traffic, with which they are liable to interfere, and which is liable to interfere with them; and International Law, yielding to the necessities of the case, has assigned to the belligerent, as against the neutral, certain specific rights and powers, and has regulated the exercise of them by a code of rules, which, though rude and imperfect, is not on the whole inequitable. Under this code neutral nations suffer, and are bound to suffer, their merchant-ships to be forcibly detained and searched on the high seas, and the property of their subjects to be seized and confiscated for acts which in time of peace would fall within the common course of legitimate trade. These neutral "obligations," these belligerent "rights," arise when war arises, and cease when it ceases: in peace the code is dormant, it is active only during war; and when it revives, it revives as a whole. To claim or to concede the exercise of any belligerent right as against a friendly power, is to recognize the existence of war, with the entire train of consequences attached to the fact by the law of nations; to claim the discharge of any neutral obligation is to concede the exercise of all neutral rights; to concede to one party the exercise of any belligerent right, is either to become the ally and adherent of that one, or to concede all such rights to both.

The code of maritime war, like every other branch of International Law, is framed to govern the acts and relations of Sovereign States. The wars which it contemplates are wars between such States; it assumes the existence on each side of a responsible authority competent to enforce the observance of rules, commission

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public ships, and constitute Courts of Prize. Theoretically it has no place in a struggle between a Sovereign Government and its rebellious subjects; theoretically, no belligerent right could in such a struggle be exerted against a friendly nation, because the latter would be disabled from exercising the rights of a neutral. But revolters do not admit that they are subjects, and cannot be expected to act as if they did; and it is certain that, when they have acquired sufficient force and organization to fight as an independent nation fights, they will employ, as far as they can, all those means which independent nations have deemed indispensable for the effectual prosecution of hostilities. The Government which they are assailing will, under the same circumstances, as certainly use the same weapons against them. Indeed, if we consider what those belligerent rights of which we are speaking are, we shall see that a refusal of them by neutral nations would never be tolerated by any body of people actually engaged in war, and strong enough to resent it. No Government with arms in its hands, whatever its character or origin, would tamely submit to see its blockades set at nought and its plans frustrated by the conveyance to the enemy, under the very guns of its own fleet, of despatches, troops, or munitions of war. Such a refusal would speedily be followed by hostile collisions on every sea, and the refusing nation would find itself engaged, against its will, in irregular warfare with those against whom it had no cause of quarrel.

A simple practical solution of this difficulty is found in recognizing both the contending parties as belligerents—that is (to expand the phrase into an expression of its full meaning), as entitled, in respect of the neutral, to all those exceptional rights or powers with which Sovereign States at war with one another are clothed by International Law. And since these rights can only be regularly exercised by means of a certain

known machinery, the recognition of them draws after it a recognition of the machinery. The sentences, therefore, of Prize Courts sitting within the territory occupied by a population in revolt and under the authority of a Government established there—commissions issued by that Government—the flag which it has chosen—are accepted and recognized within the jurisdiction of the neutral, as emanations and symbols not, indeed, of the sovereignty to which the Government lays claim, but of that substantial though temporary and precarious power which it possesses in fact. The flag and commission are not those of a Sovereign State; but they are those of an organized body of persons, who, so far as waging war goes, are able to act as a Sovereign State; for the purposes of the war, therefore, they are permitted by the neutral to confer within his jurisdiction the same substantial powers and immunities as if the revolted community were really Sovereign.

It is sometimes said that recognition to this extent is due as of right to any body of people whose numbers and organization enable them to carry on regular warfare, and who are actually engaged in it. It is not only the right of the neutral to recognize—it is the right of the belligerent to have recognition accorded to him. I am averse to the use of language which appears vague and abstract. But this, I think, cannot be denied—that recognition in such cases has been sanctioned by the practice and opinion of nations, not solely with a view to the protection of the neutral, but on wider grounds of general expediency. It is generally expedient that the ordinary rules of war should extend, as far as possible, to civil wars. The restraints which they impose are here as wholesome, their influence in making war regular and humane and in confining its range are as useful; all the reasons of convenience on which they repose apply to these wars with as much force as to others. These considerations appear to show not only

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that recognition may be conceded, but that it ought not to be withheld. If this be true, as I have no doubt it is, the change of expression will denote merely a change in the point of view from which we contemplate the rule. Regarded as giving an advantage to the belligerent, it confers a right on the belligerent: regarded as securing protection to the neutral, it confers a right on the neutral.

On this assumed right the Government of the United States acted, when, without previous communication with neutral Governments, it declared a blockade and proceeded to enforce it against neutral vessels. The Confederate Government acted on the same assumed right in proposing to issue letters of marque. And it must be a confused mind which fails to see that, if the right existed on one side, it existed also on the other—or, in other words, that any rule of international law which may be invoked as against neutrals by either belligerent may be equally invoked by both.

If it be asked when and how foreign nations may recognize the existence of a state of war, the answer is easy. They may recognize it as soon as it exists, and in whatever way they please. They are at liberty, if they think fit, to wait until their ships are actually detained or captured by either belligerent; they are equally at liberty to anticipate these contingencies by an early notification; and this latter course, which is the more prudent of the two, is commonly pursued by States which are near to the theatre of hostilities or have a large mercantile marine. If it be further asked what constitutes a state of war—where the line which divides it from a mere insurrection is to be drawn—what amounts to a sustained struggle—what quantity of force is necessary, and what degree of organization?—the answer must be that these terms, though intelligible enough, and not too vague for common use, do not

admit of precise definition.[1] It would be trifling with language to dignify by the name of war the rebellion of which Massachusetts was the scene in 1786, and it would be equally trifling with language to refuse it to the late contest in America. A Government which has itself begun to exercise belligerent rights can raise, of course, no objection on this score. This is one of those propositions which appear too obvious to be stated, till experience shows that they are not too obvious to be overlooked.[2]

[1] If it be asked (as it sometimes is) whether the *moral* quality of an act of violence or rebellion can be affected by the number or fewness of those who take part in it, by their organization, their prospects of success, and the like,—the answer is, that this is so far from being the true question at issue that it has nothing at all to do with it. But it is clear that these and other like considerations may affect, and that materially, the moral quality of the act. To stab a policeman, and to take up arms in a civil war, are not acts of the same class or on the same level, though the motive, and the object sought to be obtained, may have been in both cases the same.

[2] The American precedents on the subject of this Chapter may be read in Lawrence's *Wheaton* (1863) p. 40, note, and more fully in a more recent work by the same author, of which only the first two volumes have as yet appeared (*Commentaire sur les Eléments du Droit International et sur l'Histoire des Progrès du Droit des Gens de H. Wheaton*), in Mr. Harcourt's Letters (*Letters of Historicus*, 1863), and other well-known books. Itself the offspring of a successful revolt and a war of independence waged by land and sea against the parent State, the American Commonwealth has generally adhered with great steadiness to two principles:—

1. That questions of sovereignty and independence are to be treated as questions of fact, and hence that, where a community has forcibly separated itself from another, of which it formed an integral part and which still claims dominion over it, recognition should follow, without reference to the merits of the original controversy, on clear evidence,—but only on clear evidence,—that the revolted community has established its independence. This course the Government of the United States has pursued whenever the question arose, at the cost of "a transient estrangement of good-will in those against whom it has by force of evidence been compelled to decide."—(President Jackson's Message in Relation to Texas, 1836.)

2. That, in a struggle for independence carried on by a revolted portion of the State against the State itself, foreign nations may and

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Another observation may be added to the foregoing. A person making war in any customary way, under the flag of a *de facto* Government, against a Government which has a claim on his allegiance, is unquestionably a rebel; but it is a mistake to suppose that he can be brought under the condemnation of International Law by calling him a pirate. Piracy is said to be an offence against the law of nations. It is really punished, like every other crime, as an offence against the criminal law of the country in which the offender is tried; the peculiarity of it is, that it is everywhere recognized as a crime, has a common definition, which is everywhere accepted (though by the laws of some countries the stigma and the punishment of piracy have been affixed to other crimes also), and is justiciable everywhere. A pirate is not entitled to the protection of any nationality, nor is the ship in which he sails and which is under his control reputed to be a ship of any nation. And, as he is liable to be tried in one country as much as in another, an acquittal in one country may be pleaded to an arraignment in another. The reason why this crime is taken out of the general classification of crimes and

should maintain a strict and impartial neutrality, opening their ports to both parties, and on the same conditions, and not interfering in favour of either to the prejudice of the other.—(President Monroe's Third Annual Message, 1819.)

The second proposition, with reference especially to the question, in what cases a revolted mass of population should be recognized as belligerent, is stated with great clearness in a report presented to the French Chamber of Deputies in February 1864, on a proposal to "recognize" the Polish insurgents.—(Lawrence, *Commentaire*, vol. i, p. 185.)

I may here refer to the "Proclamation of the President of the United States for the Prevention of Unlawful Interference in the Civil War in Canada" (5th January, 1838). This Proclamation spoke of "the Civil War begun in Canada," and proceeded to warn all persons against "compromitting the neutrality" of the Government of the United States. No disturbance could well be more distinctly local than that which had then broken out in Canada; it was a rising of discontented persons who had taken arms against the Government without any pretence to civil or military organization.

thus placed by itself is, that the danger and alarm which it creates are common to all men. It is because a pirate is dangerous to everybody that he bears a *caput lupinum*, may be seized by anybody, and punished anywhere. And it is evident that, if the accepted definition of piracy includes offences which have not this character, it is too loose for its purpose. The extent of the danger and alarm created by any class of violent acts depends primarily on the nature of the motive by which they appear to be inspired. Thus, robbery is more generally dangerous than revenge, because he who robs one man would probably rob another, whilst a person desires to be revenged on those only whom he believes to have injured him; and robbery is dangerous generally, although the robber may not have formed the intention of committing more robberies than one. But a rebel is not dangerous to anybody except the Government against which he is fighting and its adherents, unless he makes, of the belligerent character which he assumes, a cloak for indiscriminate plunder; and in the chance that he may do this, if there be no one to keep him in order, lies the only conceivable plea—and that an insufficient one—for his being hunted down as a pirate. The definition of a pirate ought not, therefore, to include a rebel. I leave to persons versed in criminal law the questions whether an *animus furandi* or *lucri faciendi*, in the strict sense of the phrase, be necessary to constitute the legal offence of piracy; whether, in the absence of it, proof of any other criminal intent would be sufficient; and whether the *animus belligerandi* would be held to be such a criminal intent by the tribunals of another country, the Executive Government of which had not recognized the existence of a war. The inquiry whether a rebel in a civil war, who has committed no general depredations, could under any circumstances be tried and punished as a pirate by the courts of a foreign country, depends on the answer which may be

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given to these questions. But it is clear, I think, that at any rate he ought not to be so tried and punished. The acts of Semmes and Maffitt differed from those of Forrest and Morgan only in being done at sea instead of on land; and they were not, more than those, proper objects for a criminal prosecution in England, France, or Spain. If, therefore, a declaration of neutrality by the Government be really necessary to prevent such an abuse of criminal justice—which I doubt—or to relieve the question from uncertainty, these must be reckoned among the legitimate and useful effects of such a declaration. So far as it operates as an instruction to the officers of the Government, it is an instruction to abstain from treating these persons as that which they are not, and to treat them as that which they are.[1]

[1] "Piracy is robbery or a forcible depredation on the high seas, without lawful authority, and done *animo furandi* and in the spirit and intention of universal hostility. It is the same offence at sea with robbery on land, and all the writers on the law of nations and on the maritime law of Europe agree in this definition."—Kent, *Commentaries*, part i, section ix.

The reader will find the whole subject well discussed and all the principal authorities referred to in Abdy's edition of Kent's *Commentaries on International Law*, ch. xi; Lawrence's *Wheaton* (second annotated edition), p. 246, note; Dana's *Wheaton* (1866), p. 192, note, and p. 196, note; and Phillimore's *Commentaries on International Law*, ch. xx.

The question whether Confederate privateersmen taken very soon after the commencement of the war could be convicted of piracy, was raised in the case of the crew of the *Savannah*, tried at New York, and of William Smith, one of the crew of the *Jeff. Davis*, tried at Philadelphia, both on the 22nd October, 1861. Judge Nelson, the Judge of the Supreme Court who tried the crew of the *Savannah*, instructed the jury, that, by the general law of nations, a pirate was one who roved the sea in an armed vessel, without a commission from any Sovereign State, on his own authority, and for the purpose of appropriating to himself whatever vessels he might meet. But the evidence in this case showed that the design of the prisoner Baker, the captain of the *Savannah*, was to depredate only on the vessels of one nation,—the United States,—an offence which fell short of piracy under the law of nations. But there were special laws of the United States establishing and defining piracy. The particular law applying to this case was that of 1820, which says: "If any person shall upon the high seas commit the

crime of robbery in or upon any ship or vessel, or upon the ship's company of any ship or vessel, or the lading thereof, such person shall be adjudged to be a pirate, and upon conviction shall suffer death." The commission issued by Mr. Davis could not be admitted as a defence; for the Courts of the United States could not recognize such an authority till the Government had done so. The felonious intent, which is an essential element in the crime of robbery, consists in the taking of the property of another for the sake of gain. If this was wanting in this case, the offence, whatever it might be, was not that of piracy under the Statute. The jury could not agree, and a new trial was ordered. The offence charged against Baker was the capture of an American ship on the 1st of June, 1861. Smith was convicted.

In the case of the *Golden Rocket*, captured by the *Sumter* on the 3rd July and burnt at sea, it was held by the Supreme Courts of Massachusetts and Maine, and by the Circuit Court of the United States, that the owner could not recover for the loss under policies which insured against capture by pirates but not against belligerent capture. The ground of the decision was that, although the destruction of the *Golden Rocket* might be regarded by the law of the United States as an act of piracy, it would not be so regarded according to the general public commercial law of the world, and therefore must be presumed not to be within the meaning of the parties to the policy. A similar decision was pronounced by the Tribunal of Commerce at Marseilles (cited by Lawrence, *Commentaire sur les Eléments du Droit International, &c.*, vol. i, p. 183), in the case of a brig captured in 1823 by an armed ship of the Columbian Government, which had not been recognized in any way by France. The ship and cargo being insured by one policy against dangers of the sea, and by another against perils of war, the Tribunal held that the insurers under the latter policy were liable, on the ground that the capture was an act of war and not an act of piracy.

If the *Shenandoah* had persisted in making captures (as at one time it appeared that she was doing) after it had become clear that the war was at an end and that the *de facto* Government which had commissioned her had wholly ceased to exist, and after these facts were known to her commander, the question whether his acts were or were not piracy might have been raised in an English Court.

CHAPTER VI.

Relations of Great Britain to the United States.—Course pursued by the British Government, and by other European Governments, at the beginning of the War. The Queen's Proclamation of Neutrality.—Declaration of the Emperor of the French.—Declarations and Notifications of other Maritime Powers.

THE progress of disunion in America had been watched with anxiety by the principal European Governments, and especially by the Government of Great Britain. The relations between the two countries were friendly, and their intercourse incessant. Of the whole foreign trade of the United States more than three-fifths, of the foreign tonnage entering American ports more than four-fifths, were contributed by this kingdom and its colonies. From the Western States of the Union we drew every year large supplies of food, and from the Southern the raw material for our most important manufacture. Great Britain was herself an American Power, and her possessions bordered on those of the Republic across the whole breadth of the continent. Any grave change or disturbance, therefore, occurring in the United States had to the English Government an importance which it could have to no other. Nor is it immaterial to observe that, although unhappy dissensions have sometimes divided the two nations, the influences of a common origin, language, and literature, seem to be indestructible, and that an Englishman hardly feels himself a foreigner in America, or an American in England.

While the revolt was yet to come, Earl Russell had

communicated to Lord Lyons, then Her Majesty's Minister at Washington, the "concern" with which the "danger of secession" was regarded by the Queen's Government.[1] He had expressed some surprise at Mr. Buchanan's Message, which "appeared to be preparing beforehand an apology" for it; but had instructed Lord Lyons to abstain carefully from any interference, even in the form of advice.[2]

Four days before the expiration of President Buchanan's term of office, Mr. Black, who had succeeded General Cass as Secretary of State, addressed to all the Ministers of the Republic at foreign Courts a circular desiring them to use all proper and necessary means in order to prevent the Governments, to which they were respectively accredited, from recognizing the independence of the seceding States. "This Government," said Mr. Black, "has not relinquished its constitutional jurisdiction within the territory of those States, and does not desire to do so." "It had the right," he added, "to ask of all foreign Powers that they should take no steps which may tend to encourage the revolutionary movements of the seceding States, or increase the danger of disaffection in those which still remain loyal."[3] This despatch was read by Mr. Dallas to Lord Russell, who "replied shortly and verbally, stating that, even if the Government of the United States had been willing to acknowledge the separation of the seceding States as founded in right, Her Majesty's Government would have seen with great concern the dissolution of the Union which bound together the members of the American Republic: that the opposition of the Government of the United States to any such separation, and the denial by them of its legality, would make Her Majesty's Government very reluctant to take any step

[1] *Lord J. Russell to Lord Lyons*, 29th November, 1860.

[2] *Lord J. Russell to Lord Lyons*, 26th December, 1860.

[3] *Mr. Black to United States' Ministers abroad*, 28th February, 1861.

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which might encourage or sanction the separation: that, however, it was impossible to state, at the present moment, in what shape the question might present itself; nor was it in his power to bind the British Government to any particular course of conduct in cases of which the circumstances and the significance were at present unknown to us."[1]

Mr. Seward, on assuming office as Secretary of State, renewed, by a second circular, with increased emphasis, the injunctions given by his predecessor, urging "the exercise of the greatest possible diligence and fidelity to counteract and prevent the designs of those who would invoke foreign intervention to embarrass or overthrow the Republic."

"You will truthfully urge upon the ——— Government the consideration that the present disturbances have had their origin only in popular passions, excited under novel circumstances of very transient character, and that while not one person of well-balanced mind has attempted to show that dismemberment of the Union would be permanently conducive to the safety and welfare of even his own State or section, much less of all the States and sections of our country, the people themselves still retain and cherish a profound confidence in our happy Constitution, together with a veneration and affection for it such as no other form of Government ever received at the hands of those for whom it was established."

He suggested that the revolt, should it break up the Union, "might tend by its influence to disturb and unsettle the existing system of government in other parts of the world, and arrest the progress of civilization and improvement;" and he expressed his confidence "that these, with other considerations, would prevent foreign Governments from yielding to solicitations to intervene in any unfriendly way in the domestic concerns of the country."[2]

On this despatch, when communicated to him, Lord Russell repeated in substance what he had said before.

[1] *Lord J. Russell to Lord Lyons*, 22nd March, 1861.

[2] *Mr. Seward to United States' Ministers abroad*, 9th March, 1861.

The Government regretted the secession, and was "in no hurry to recognize the separation as complete and final;" but it was impossible to tell "how and when circumstances might arise which would make a decision necessary." On that subject, therefore, he thought it well to decline further discussion at the time.[1]

The American Government appears to have been extremely apprehensive at this time lest the revolted States should succeed in obtaining from foreign Powers a recognition of their independence. The elaborate series of separate instructions composed by Mr. Seward for its diplomatic agents in Europe—instructions in which no pains were spared to shape the argument according to the interests or sentiments which he supposed most likely to influence each individual Court—were evidently dictated by this apprehension.[2] And, had the United States forborne altogether to attempt

[1] 8th April, 1861. This reply, as reported by Mr. Dallas, was complained of by the American Government as "abrupt and reserved," and "seeming to imply that under some circumstances, not explained, a recognition might be made." In a subsequent conversation, on the 18th May, Lord Russell gave a somewhat fuller explanation of his meaning, and this was accepted as satisfactory, and may be stated here in his own words:—

"I repeated to Mr. Adams what I had said to Mr. Dallas: that, had a separation taken place between different parts of the American Union in an amicable manner, Her Majesty's Government would still have regretted that a Union of States so famous and so conspicuous for its love of liberty and enlightened progress should have been dissolved. That the opposition made by the Government of the United States to the secession would make us still more averse to take any step to record and recognize that secession. I explained to Mr. Adams, however, that the despatches of Judge Black and Mr. Seward seemed to ask on our part for a perpetual pledge that we would, under no circumstances, recognize the seceding States. I had, therefore, thought it necessary to add that Great Britain must hold herself free to act according to the progress of events and as circumstances might require."

[2] *Mr. Seward to Mr. Adams*, 10th April, 1861; *to Mr. Dayton*, 22nd April; *to Mr. Burlingame*, 13th April; *to Mr. Judd*, 22nd March; *to Mr. Sanford*, 26th March; *to Mr. Schurz*, 27th April; *to Mr. Clay*, 6th May; *to Mr. Wood*, 1st May; *to Mr. Marsh*, 9th May; *to Mr. Fogg*, 15th May; *to Mr. Pike*, 16th May.

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the re-conquest of the seceders, it would certainly have been realized sooner or later. Recognition would then have become a matter of course, after the lapse of a reasonable time. The mere assertion of a claim on the part of the United States, however energetic or persistent, could only delay this, and could not have prevented it in the long run. But the idea of recognizing them immediately, before their independence had been firmly established, does not appear to have been entertained by any European Government. Lord Russell's answers to Mr. Dallas were brief and extremely cautious, but there is no doubt that they were perfectly conformable to the principles which in America, no less than in England, have been held to govern these questions, and that no answer substantially differing from them would have been consistent with those principles.[1] It was certain at this time that the Con-

[1] Such answers as the following would not, I presume, be expected by America from England, as they would not be expected by England from America :—

Russia, "from the principle of unrelenting opposition to all revolutionary movements, would be the last to recognize any *de facto* Government of the disaffected States of the American Union."—*Mr. Wright to Mr. Seward*, 8th May, 1861.

Austria "was not inclined to recognize *de facto* Governments anywhere."—*Mr. Jones to Mr. Seward*, 15th April, 1861.

Spain "would have nothing to do with the rebel party in the United States in any sense."—*Mr. Perry to Mr. Seward*, 13th June, 1861.

M. Thouvenel's answer was substantially the same as Lord Russell's:—

"M. Thouvenel, in reply, said that no application had yet been made to him by the Confederated States, in any form, for the recognition of their independence; that the French Government was not in the habit of acting hastily upon such questions, as might be seen by its tardiness in recognizing the new Kingdom of Italy; that he believed the maintenance of the Federal Union, in its integrity, was to be desired for the benefit of the people North and South, as well as for the interests of France; and the Government of the United States might rest well assured that no hasty or precipitate action would be taken on that subject by the Emperor. But whilst he gave utterance to these views, he was equally bound to say that the practice and usage of the present century had fully established the right of *de facto* Governments to recognition when a proper case was made out for the decision of

federate States possessed a political organization which would have qualified them for a place among independent nations. It was not certain whether, if a serious effort were made to subdue them, they could maintain their independence. It was uncertain, also, whether such an attempt would be made.

On this latter head all doubt was at an end when the news reached Europe that civil war had begun. The path to be pursued by the European Powers was now clear; their duty was to wait till the contest should be decided, and to stand scrupulously neutral in the meantime. At every Court in Europe the United States had asked for neutrality—only neutrality; and an impartial neutrality was the course dictated by the highest considerations of expediency, as well as by the lowest and most palpable.[1] The question what was to be the future of the American Commonwealth, momentous as it might be for Europe, was an American question, which ought to be fought out—if fought out it must be—in America and by Americans alone.

On the 30th April the British Government received from Lord Lyons information of the bombardment of Fort Sumter, and of President Lincoln's call for 75,000 men. A telegram, announcing that Mr. Davis had

foreign Powers. Here the official interview ended."—*Mr. Faulkner to Mr. Seward*, 15th April, 1861.

[1] "The President neither expects nor desires any intervention, or even any favour, from the Government of France, or any other, in this emergency. Whatever else he may consent to do, he will never invoke, nor even admit, foreign interference or influence in this or any other controversy in which the Government of the United States may be engaged with any portion of the American people. It has been simply his aim to show that the present controversy furnishes no one ground on which a great and friendly Power, like France, can justly lend aid or sympathy to the party engaged in insurrection; and therefore he instructs you to insist on the practice of neutrality by the Government of the Emperor, as all our Representatives are instructed to insist on the neutrality of the several Powers to which they are accredited."—*Mr. Seward to Mr. Dayton*, 22nd April, 1861.

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taken measures for issuing letters of marque, arrived at the same time as Lord Lyons's despatch. Two days afterwards intelligence of the Proclamation of blockade reached London: the fact was mentioned in the House of Commons on the evening of the 2nd May; on the 3rd the substance of the Proclamation was published in the English newspapers; and on the 5th a copy of it was received from Her Majesty's Consul at New York. A second copy, transmitted by Lord Lyons, reached Downing Street on the 10th, having been delayed by the disturbed condition of Maryland, where a secessionist rising had cut off, on the night of the 19th April, and for several days afterwards, all communication between Washington and the North. Lord Lyons inclosed in the same despatch a copy of Mr. Davis's notification, issued on the 17th April. On the 11th May the Proclamation of blockade was officially communicated to Earl Russell by Mr. Dallas. He at the same time placed in Lord Russell's hands a copy of a circular, dated 20th April, which had been addressed by Mr. Seward to the Ministers of the United States at foreign Courts, and in which the Secretary of State referred to the probability that attempts would be made to fit out privateers in England against American commerce.

On the first publication of this intelligence, merchants, ship-owners, and insurers took the alarm. The Atlantic is threaded by many well-known highways, intersecting one another in all directions, over which the commerce of America, the West Indies, and Brazil passes to and fro. British ships throng these highways. In many of the Southern ports there was a large amount of British property; the cargoes in the Mississippi alone at the end of May were computed to be worth a million sterling, and the greater part of these had been shipped for Liverpool.[1] Owners of British shipping look, and have a

[1] Mr. Seward (*to Lord Stanley*, 12th January, 1867) is severe upon the unlucky persons whose property was thus placed in jeopardy. He

right to look, for protection to the British squadrons stationed in various parts of the world; and it is the duty of the British Government to keep the commanding officers of those squadrons properly instructed as to the cases in which protection should be afforded. Three or four weeks must elapse before instructions, even if sent out immediately, could reach the towns on the Southern coast, the Bahamas, and the British West Indies, to say nothing of the more remote dependencies of the Crown, or of commerce scattered over more distant seas. But what had occurred? A blockade had been proclaimed, extending over a coast line of some 3,000 miles. Letters of marque had been publicly offered—an invitation very tempting to the adventurous and reckless men who are always to be found in every maritime nation. Both the Government of the United States and the *de facto* Government of the Confederacy had assumed, and were actually exercising on the high seas, the rights of war; and the neutral who resists the enforcement of those rights does so under the penalty of capture. Branches of trade perfectly lawful before might now be treated as unlawful, and punished by seizure and confiscation. Mr. Lincoln's administration had sent agents to England to purchase arms; Mr. Davis's would certainly resort,

seems, indeed, to be rather angry with them. "Lord Stanley says that Her Majesty's Government had to provide at a distance for the losses and interests of British subjects in or near the seat of war. But who required British subjects to be there? Who obliged them to remain in a place of danger? If they persisted in remaining there, had they not all the protection the citizens of the United States enjoyed? Were they entitled to more?" Who required them to be there? Who obliged them to remain there? Why, they were there when the war broke out, in the pursuit of their legitimate trade, which was just as much for the advantage of America as for that of Great Britain. What protection citizens of the United States enjoyed in May, 1861, at Richmond, Charleston, and New Orleans, I do not know. But it is certain that British subjects and property were not, on the outbreak of the war, treated by the Government of the United States and its officers as upon the same footing with American subjects and property; they were treated as neutrals and neutral property are treated in war.

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if it had not already resorted, to the same market. This was the state of facts existing during the first week of May, so far as they were known to the English public; and on these facts the Government was called upon, both by the mercantile community and by some of the warmest partisans of the Northern cause, to define its position, to recognize or repudiate the blockade, to accept or reject the character of a neutral Power, and to publish its decision as widely and as speedily as possible. No request could have been more natural or more reasonable.[1]

[1] In the House of Commons, on the 2nd May, Earl Russell (then Lord John Russell), answering a question put by Mr. Ewart, said: "Her Majesty's Government has felt that it was its duty to use every possible means to avoid taking any part in the lamentable contest now raging in the American States. Nothing but the imperative duty of protecting British interests, in case they should be attacked, justifies the Government in at all interfering. We have not been involved in any way in that contest by any act or giving any advice in the matter, and, for God's sake, let us, if possible, keep out of it."

On the 9th May, "Mr. W. E. Forster said: He wished to ask the Secretary of State for the Home Department whether it is not a criminal offence against the provisions of the Foreign Enlistment Act for any subject of Her Majesty to serve on board of any privateer licensed by the person assuming, as President of the Southern Confederacy, to exercise power over a part of the United States, or for any person within Her Majesty's dominions to assist in the equipment of such privateer; and, if so, whether he will take measures to prevent the infringement of the law, either by Her Majesty's subjects or by any agents of the Southern Confederacy who are now in England; and also whether any such privateer equipped in a port of Her Majesty's dominions will not be liable to forfeiture?

"Sir George Lewis: Sir, it is in the contemplation of Her Majesty's Government to issue a Proclamation for the purpose of cautioning all Her Majesty's subjects against any interference in the hostilities between the Northern and Southern States of America. In that Proclamation the general effect of the Common and Statute Law on the matter will be stated. The general principle of our law is, that no British subject shall enter into the service of any foreign Prince or Power, or engage in any hostilities that may be carried on between two foreign States. With respect to the precise effect of the Foreign Enlistment Act in the case supposed, it would not be proper for me to undertake to lay it down, inasmuch as the construction of any Statute is matter for judicial decision rather than for any opinion of my own. The general bearing of the law

On the 1st May directions were given for the reinforcement of the squadron on the North American and West Indian stations, "so that the Admiral in command may be able duly to provide for the protection of British shipping in any emergency that may occur."[1] On the 6th, after consultation with the Law Officers, the Government came to the conclusion that, upon the principles recognized both by Great Britain and by America, the revolted States must be regarded as a belligerent party in the war now known to have begun.

will, however, as I have said, be set forth in the Proclamation."—*Hansard's Parliamentary Debates* (*Third Series*), vol. clxii, pp. 1378 and 1763.

The reasons which make it important that a neutral Government should lose no time in issuing instructions to its officers, and information to its subjects, are stated by Mr. Dana:—

"Where the insurgents and the parent State are maritime, and the foreign nation has extensive commercial relations and trade at the ports of both, and the foreign nation and either or both of the contending parties have considerable naval force, and the domestic contest must extend itself over the sea, then the relations of the foreign State to this contest are far different. In such a state of things, the liability to political complications, and the questions of right and duty to be decided at once, usually away from home, by private citizens or naval officers, seem to require an authoritative and general decision as to the *status* of the three parties involved. If the contest is a war, all foreign citizens and officers, whether executive or judicial, are to follow one line of conduct. If it is not a war, they are to follow a totally different line. . . . . .

"Now, all private citizens of a foreign State, and all its executive officers and judicial magistrates, look to the political department of their Government to prescribe the rule of their conduct, in all their possible relations with the parties to the contest. This rule is prescribed in the best and most intelligible manner for all possible contingencies by the simple declaration, that the contest is, or is not, to be treated as war. If the state of things requires the decision, it must be made by the political department of the Government. It is not fit that cases should be left to be decided as they may arise, by private citizens, or naval or judicial officers, at home or abroad, by sea or land. It is, therefore, the custom of nations for the political department of a foreign State to make the decision."—Dana's *Wheaton*, p. 135, Note.

[1] *Lord J. Russell to the Lords Commissioners of the Admiralty*, 1st May, 1861.

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On the 13th, the Royal Sign-manual was affixed to a Proclamation of Neutrality, which was published in the *London Gazette* on the following day. Copies were sent on the 15th to Lord Lyons and to the British Consuls at American ports, "with instructions to exhibit the same in their respective Consular offices, and to take suitable steps for making known the purport of the same to Her Majesty's subjects residing or entering within their jurisdiction, taking care, however, to do so in the manner best calculated to avoid wounding the susceptibilities of the authorities or people of the places where they reside."[1]

The tenor of the Proclamation was as follows:—It began by taking notice that "hostilities had unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America," announced the Queen's determination "to maintain a strict and impartial neutrality in the contest between the said contending parties," and commanded her subjects to observe a like neutrality. It recited at length various prohibitions of British criminal law contained in the Foreign Enlistment Act (59 Geo. III, c. 69), enjoined obedience to these prohibitions, and concluded by a warning, addressed to all Her Majesty's subjects, that, should they infringe the law of nations by any violation of neutral duties, they would incur under that law penal consequences against which they would receive no protection from the Crown. The substantial part of it was the public declaration that, in the judgment of the Executive, a state of war existed, with all those incidents which are attached to a state of war by the law of nations. In other respects, it operated only as a warning. It imposed on the subjects of the Crown no legal liabilities from which they would otherwise have

[1] *Lord J. Russell to Lord Lyons*, 15th May, 1861.

been free, nor did it, as I think, relieve them from any to which they would otherwise have been subject.[1]

This Proclamation was followed on the 1st June by Orders interdicting the armed ships and privateers of both belligerents from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's Colonies or possessions abroad. The prohibition was, as must have been foreseen, disadvantageous solely to the Confederate States, whose cruisers, after the blockade had been made effective, were shut out from taking their prizes into any port of their own. They were deprived in consequence not only of the value of such ships and cargoes as they could capture, but of what was far more important—the stimulus which the hope of prize-money lends to maritime war, and which was ill-supplied by vague promises that the value of prizes taken and destroyed should be paid to the captors when the war was at an end. The Orders drew, therefore, earnest but ineffectual expostulations from the agents of the Confederate Government in London; and Mr. Seward, when it was communicated to him, remarked that "it would probably prove a death-blow to Southern privateering."[2] The Southern Confederacy seem, in fact, to have had few or no privateers after the first year of the war; and the officers and crews who served in its scanty marine had no inducements to animate them beyond zeal for their cause, love of adventure, and their pay.[3]

Regulations of this kind are not governed by any

[1] For the Proclamation itself see the Note at the end of this Chapter. It was framed on the general model of that issued in 1859 on the commencement of the war between Austria and France and Sardinia; and the same model was afterwards employed in the wars between Spain and Chili, 1866, and between Austria and Prussia in the same year.

[2] *Lord Lyons to Lord J. Russell*, 17th June, 1861.

[3] For these Orders, and the Orders and Instructions issued subsequently during the war, see the Note at the end of this Chapter.

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general law. They are entirely discretionary. A neutral Government may admit into its ports or exclude from them (unless in case of stress of weather) both the public ships and privateers of the belligerent powers, or may admit the former and exclude the latter. It may suffer prizes to be brought in and sold, or to be brought in but not sold, or not to be brought in at all. In laying down these rules, the neutral regards his own convenience, and is guided by his own judgment; and, so long as they are applied indifferently to both belligerents, neither has a right to complain of them on the ground that they are practically more disadvantageous to himself than to his enemy. The incidence of a rule can never indeed be exactly even unless the circumstances of the belligerents are exactly the same. The neutral is not to blame for this inequality, nor is he under any obligation to provide against it. These are settled maxims of international law.

The reasons which had actuated the British Government operated also, though not so forcibly or so immediately, on other European Powers. The French Emperor, on the 10th June, issued a Declaration which, if compared with the British Proclamation, will be found to differ little from it in substance. The former is in one respect a little more indulgent than the latter, since it permits prizes to be brought into French ports, though it does not allow them to be sold there.

Declarations or notifications were subsequently issued by the Governments of Belgium, the Netherlands, Spain, Russia, Prussia, Portugal, Bremen, and Hamburg. The existence of a state of war, and of the rights with which it arms both belligerents alike, was thus formally recognized by the maritime Powers.

NOTE.

Proclamations, Orders, and Notifications issued by the Government of Great Britain and other Neutral Powers during the Civil War.

I. PROCLAMATION, ORDERS, AND NOTIFICATIONS ISSUED BY THE GOVERNMENT OF GREAT BRITAIN.

1. The Queen's Proclamation of Neutrality :—

"Victoria R.

"Whereas we are happily at peace with all Sovereigns, Powers, and States.

"And whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America.

"And whereas we, being at peace with the Government of the United States, have declared our Royal determination to maintain a strict and impartial neutrality in the contest between the said contending parties.

"We therefore have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation.

"And we do hereby strictly charge and command all our loving subjects to observe a strict neutrality in and during the aforesaid hostilities, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf, or the law of nations in relation thereto, as they will answer to the contrary at their peril.

"And whereas in and by a certain Statute made and passed in the 59th year of His Majesty King George III, intituled 'An Act to prevent enlisting or engagement of His Majesty's subjects to serve in a foreign service, and the fitting out or equipping, in His Majesty's dominions, vessels for warlike purposes, without His Majesty's licence,' it is amongst other things declared and enacted as follows :—

"'That if any natural-born subject of His Majesty, &c. (2nd Clause of the Foreign Enlistment Act').

"And it is in and by the said Act further enacted,—

"'That if any person within any part of the United Kingdom, &c. (7th Clause of the Foreign Enlistment Act').

"And it is in and by the said Act further enacted,—

"'That if any person in any part of the United Kingdom, &c. (8th Clause of the Foreign Enlistment Act').

"Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, we do hereby strictly command, that no person or persons whatsoever do commit any act, matter, or thing whatsoever, contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of our high displeasure.

"And we do hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that if any of them shall presume, in contempt of this our Royal Proclamation, and of our high displeasure, to do any acts in derogation of their duty, as subjects of a neutral Sovereign in the said contest, or in violation or contravention of

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the law of nations in that behalf; as for example, and more especially, by entering into the military service of either of the said contending parties as commissioned or non-commissioned officers or soldiers; or by serving as officers, sailors, or marines on board any ship or vessel of war or transport of or in the service of either of the said contending parties; or by serving as officers, sailors, or marines on board any privateer bearing letters of marque of or from either of the said contending parties; or by engaging to go or going to any place beyond the seas with intent to enlist or engage in any such service, or by procuring or attempting to procure, within Her Majesty's dominions at home or abroad, others to do so; or by fitting out, arming, or equipping any ship or vessel to be employed as a ship of war or privateer or transport by either of the said contending parties; or by breaking or endeavouring to break any blockade lawfully and actually established by or on behalf of either of the said contending parties; or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article or articles considered and deemed to be contraband of war, according to the law of modern usage of nations, for the use or service of either of the said contending parties, all persons so offending will incur and be liable to the several penalties and penal consequences by the said Statute or by the law of nations in that behalf imposed or denounced.

"And we do hereby declare, that all our subjects, and persons entitled to our protection, who may misconduct themselves in the premises, will do so at their peril and of their own wrong, and that they will in nowise obtain any protection from us against any liabilities or penal consequences, but will, on the contrary, incur our high displeasure by such misconduct.

"Given at our Court at the White Lodge, Richmond Park, this 13th day of May, in the year of our Lord 1861, and in the 24th of our reign."

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2. Order interdicting Cruisers and Privateers of the United States, and of the so-styled Confederate States, from carrying Prizes into British Ports:—

Letter to the Admiralty.

"My Lords, "*Foreign Office, June* 1, 1861.

"Her Majesty's Government are, as you are aware, desirous of observing the strictest neutrality in the contest which appears to be imminent between the United States and the so-styled Confederate States of North America; and with the view more effectually to carry out this principle they propose to interdict the armed ships, and also the privateers, of both parties, from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any of Her Majesty's Colonies or possessions abroad.

"I have accordingly to acquaint your Lordships that the Queen has been pleased to direct, that orders in conformity with the principles above stated should forthwith be addressed to all proper authorities in the United Kingdom and to Her Majesty's naval or other authorities in

all quarters beyond the United Kingdom, for their guidance in the circumstances.

Note.

"I have, &c.

(Signed) "J. RUSSELL.

"The Lords Commissioners of the Admiralty."

A similar letter was addressed on the same day to each of the Secretaries of State for India, War, and the Colonies.

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3. Circular Despatch to Colonial Governors respecting Treatment of Confederate and other Ships in British Ports:—

"Sir, "*Downing Street, November* 15, 1861.

"Having had occasion to consult the Law Officers of the Crown on the subject of remonstrances addressed to the Governors of some of the Colonies by Consuls of the United States, in regard to certain particulars in the treatment of vessels bearing the flag of the States which have seceded from the Union, I think it right to communicate to you, for your information and guidance, the principles which ought to be observed in cases of the kind which raised the present question.

"You will understand, therefore, that no foreign Consul has any power or jurisdiction to seize any vessel (under whatever flag) within British territorial waters, and that the British authorities ought not to take any steps adverse to merchant vessels of the Confederate States, or to interfere with their free resort to British ports.

"With respect to supplies, even of articles clearly 'contraband of war' (such as arms or ammunition), to the vessels of either party, the Colonial authorities are not at liberty to interfere, unless anything should be done in violation of the Foreign Enlistment Act, 59 Geo. III, cap. 69, which prohibits the equipping, furnishing, fitting out, and arming of ships or vessels for the service of foreign belligerent Powers, and also the supply of guns or equipments for war, so as to increase the warlike force of vessels of war, but which does not render illegal the mere supply of arms or ammunition, &c., to private ships or vessels.

"If it should be necessary for the Colonial authorities to act in any such case, it should only be done when the law is regularly put in force, and under the advice of the Law Officers of the Crown.

"With respect to the supplying in British jurisdiction of articles *ancipitis usus* (such, for instance, as coal), there is no ground for any interference whatever on the part of the Colonial authorities.

"I have, &c.

(Signed) "NEWCASTLE."

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4. Regulations respecting Belligerent Ships in British Ports:—

Letter to the Admiralty.

"My Lords, "*Foreign Office, January* 31, 1862.

"Her Majesty being fully determined to observe the duties of neutrality during the existing hostilities between the United States and the States calling themselves 'the Confederate States of America,' and

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being, moreover, resolved to prevent, as far as possible, the use of Her Majesty's harbours, ports, and coasts, and the waters within Her Majesty's territorial jurisdiction, in aid of the warlike purposes of either belligerent, has commanded me to communicate to your Lordships, for your guidance, the following rules, which are to be treated and enforced as Her Majesty's Orders and Directions.

"Her Majesty is pleased further to command that these rules shall be put in force in the United Kingdom and in the Channel Islands on and after Thursday the 6th day of February next, and in Her Majesty's territories and possessions beyond the seas, six days after the day when the Governor or other chief authority of each of such territories or possessions respectively shall have notified and published the same, stating in such notification that the said rules are to be obeyed by all persons within the same territories and possessions.

"I. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves 'the Confederate States of America,' or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either of the belligerents shall be permitted to enter or remain in the port of Nassau, or in any other port, roadstead, or waters of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters, by special leave, or under stress of weather, the authorities of the place shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

"If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the Lieutenant-Governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there then shall be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the Lieutenant-Governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant-ship), which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

"II. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves 'the Confederate States of America,' all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, or of any waters subject to the terri-

torial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose or for the purposes of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of or leave any port, roadstead, or waters, subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant-ship), shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

"III. If any ship of war or privateer of either belligerent shall, after the time when this order shall be first notified and put in force in the United Kingdom and in the Channel Islands, and in the several Colonies and foreign possessions and dependencies of Her Majesty respectively, enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in the Channel Islands or in any of Her Majesty's Colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew or repairs; in either of which cases the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies, beyond what may be necessary for her immediate use; and no such vessel, which may have been allowed to remain within British waters for the purpose of repair, shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after the necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant-ships), of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant-ship), of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent; and the times hereby limited for the departure of such ships of war and privateers respectively shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

"IV. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies, except provisions and such other things as may be requisite for the subsistence of her crew; and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer, in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, without special permission,

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until after the expiration of three months from the time when such coal may been last supplied to her within British waters as aforesaid.

"I have, &c.

(Signed) "J. RUSSELL."

A similar letter was addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

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5. Despatch to the Governor of the Bahamas respecting belligerent ships desiring to enter the Ports of those Islands:—

"Sir, "*Downing Street, October* 6, 1863.

"Doubts having been expressed as to whether, under the Regulations of the 31st January, 1862, which were embodied in a Proclamation issued by you on the 11th March following, it is required that the Commander of a belligerent ship of war or privateer should obtain the permission of the local authorities before entering the ports, roadsteads, or waters of the Bahamas out-islands, when the Governor is not there present, I am to acquaint you that Earl Russell has taken Her Majesty's pleasure thereupon, and you are to understand that at the ports of the out-islands, as at Nassau, the special leave of the Governor himself is required (unless in stress of weather) by any belligerent vessel desiring to enter, with this exception only, that in cases of grave emergency and real necessity and distress, such as a sailing-vessel being dismasted, or accident happening to the machinery of a steam-vessel, the vessel may enter the ports, roadsteads, or waters on obtaining leave from a resident officer, to whom the Governor shall have delegated his authority in that behalf.

"With a view to give effect to Her Majesty's intentions, you will be pleased to convey to the officers in the out-islands to whom it may best be confided the authority in question, taking care to communicate to them copies of the Regulations of the 31st January, 1862, and calling their especial attention to the limits of the authority delegated, and to that clause of the Regulations of 31st January, 1862, in which it is directed that vessels entering under stress of weather, or by special leave, shall be required to put to sea as soon as possible.

"I have, &c.

(Signed) "NEWCASTLE.

"Governor Bayley, C.B., &c."

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6. Circular Instructions to Governors of Colonies respecting the Treatment of Prizes Captured by Federal or Confederate Cruisers if brought into British Waters:—

"Sir, *Downing Street, 2nd June*, 1864.

"I think it well to communicate to you the decisions at which Her Majesty's Government have arrived on certain questions which have

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arisen respecting the treatment of prizes captured by Federal or Confederate cruisers if brought into British waters.

"1. If any prize captured by a ship of war of either of the belligerent powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given by the Governor to the captors immediately to depart and remove such prize.

"2. A vessel which shall have been actually and *bonâ fide* converted into, and used as, a public vessel of war, shall not be deemed to be a prize within the meaning of these rules.

"3. If any prize shall be brought within Her Majesty's jurisdiction, through mere stress of weather, or other extreme and unavoidable necessity, the Governor may allow for her removal such time as he may consider to be necessary.

"4. If any prize shall not be removed at the time prescribed to the captors by the Governor, the Governor may detain such prize until Her Majesty's pleasure shall be made known.

"5. If any prize shall have been captured by any violation of the territory or territorial waters of Her Majesty, the Governor may detain such prize until her Majesty's pleasure shall he made known.

"Her Majesty's Government have not thought it necessary to make any additions to the Instructions already given with respect to cargoes, viz., that Her Majesty's Orders apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

"These rules are for the guidance of the Executive authority and are not intended to interfere in any way with the process of any court of justice.

"I have, &c.
(Signed) "EDWARD CARDWELL."

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7. Order prohibiting Belligerent Ships from being brought into British Ports for the purpose of being dismantled or sold:—

"*Foreign Office, September* 8, 1864.

"It is hereby notified that Her Majesty has been pleased to order that for the future no ships of war belonging to either of the belligerent powers of North America shall be allowed to enter, or to remain, or be, in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the Commissioners of Her Majesty's Customs, and to the Governors of Her Majesty's Colonies and foreign possessions, to see that this order is properly carried into effect."

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8. Instructions issued at the End of the War :—

Letters to the Admiralty.

"My Lords, "*Foreign Office, May* 11, 1865.

"I have the honour to acquaint you that, in the existing state of the civil war in America, and the uncertainty which may be felt as to its continuance, it appears to Her Majesty's Government that the time has arrived for ceasing to enforce so much of the Orders which, in pursuance of my Letter of the 31st of January, 1862, were issued by the several departments of Her Majesty's Government, as empowered the authorities of any port belonging to Her Majesty, either in the United Kingdom or the Channel Islands, or in any of Her Majesty's Colonies or foreign possessions or dependencies, to require any ship of war or privateer of either belligerent which might enter any port, roadstead, or waters belonging to Her Majesty, in order to obtain provisions or things necessary for the subsistence of her crew, or to effect repairs, to put to sea as soon as possible after the expiration of a period of twenty-four hours, without permitting her to take in supplies beyond what might be necessary for her immediate use; and not to suffer any such vessel as might have been allowed to remain within British waters for the purpose of repair to continue in any port, roadstead, or waters belonging to Her Majesty for a longer period than twenty-four hours after her necessary repairs should have been completed; and also so much of the same orders as limited the quantity of coal and the period within which it might be obtained, to be embarked on board any such ship of war or privateer of either belligerent.

"I have addressed a similar letter to the Secretaries of State for the Home, Colonial, War, and India Departments and to the Lords Commissioners of Her Majesty's Treasury.

"I have, &c.

(Signed) "RUSSELL."

"My Lords, "*Foreign Office, June* 2, 1865.

"I have the honour to state to your Lordships that, since the date of my letter of the 11th ultimo, intelligence has reached this country that the late President of the so-called Confederate States has been captured by the military forces of the United States, and has been transported as a prisoner to Fort Monroe, and that the armies hitherto kept in the field by the Confederate States have for the most part surrendered or dispersed.

"In this posture of affairs Her Majesty's Government are of opinion that neutral nations cannot but consider the civil war in North America as at an end.

"In conformity with this opinion Her Majesty's Government recognize that peace has been restored within the whole territory of which the United States of North America before the commencement of the civil war were in undisturbed possession.

"As a necessary consequence of such recognition on the part of Her Majesty's Government, Her Majesty's several authorities in all ports, harbours, and waters belonging to Her Majesty, whether in the United Kingdom or beyond the seas, must henceforth refuse permission to any vessel of war carrying a Confederate flag to enter any such ports, harbours, and waters; and must require any Confederate vessels of war which, at the time when these orders reach Her Majesty's authorities in such ports, harbours, and waters, may have already entered therein on the faith of Proclamations heretofore issued by Her Majesty, and which, having complied with the provisions of such Proclamations, may be actually within such ports, harbours, and waters, forthwith to depart from them.

"But Her Majesty's Government consider that a due regard for national good faith and honour requires that Her Majesty's authorities should be instructed, as regards any such Confederate vessels so departing, that they should have the benefit of the prohibition heretofore enforced against pursuit of them within twenty-four hours by a cruiser of the United States lying at the time within any such ports, harbours, and waters, and that such prohibition should be then and for the last time maintained in their favour.

"If, however, the Commander of any Confederate vessel of war which may be found in any port, harbour, or waters of Her Majesty's dominions at the time these new orders are received by Her Majesty's authorities, or may enter such port, harbour, or waters, within a month after these new orders are received, should wish to divest his vessel of her warlike character, and, after disarming her, to remain without a Confederate flag within British waters, Her Majesty's authorities may allow the Commander of such vessel to do so at his own risk in all respects, in which case he should be distinctly apprised that he is to expect no further protection from Her Majesty's Government, except such as he may be entitled to in the ordinary course of the administration of the law in time of peace.

"The rule as to twenty-four hours would of course not be applicable to the case of such vessel.

"I have addressed a similar letter to the Secretaries of State for the Home, Colonial, India, and War Offices, and also to the Lords Commissioners of Her Majesty's Treasury, requesting them, as I do your Lordships, to issue instructions in conformity with the decision of Her Majesty's Government to the several British authorities at home or abroad who may be called upon to act in the matter.

"I am, &c.

(Signed) "RUSSELL."

Similar letters were addressed to the Secretaries of State for the Home, Colonial, War, and India Departments, and to the Lords Commissioners of Her Majesty's Treasury.

Chap. VI. II. Declarations and Notifications issued by other Neutral Powers.

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FRANCE.

Emperor's Declaration.

"*Paris, le* 10 *Juin*, 1861.

"Le Ministre des Affaires Etrangères a soumis à l'Empereur la déclaration suivante, que Sa Majesté a revêtue de son approbation:—

"*Déclaration.*

"Sa Majesté l'Empereur des Français, prenant en considération l'état du paix qui existe entre la France et les Etats Unis d'Amérique, a résolu de maintenir une stricte neutralité dans la lutte engagée entre le Gouvernement de l'Union et les Etats qui prétendent former une Confédération particulière.

"En conséquence, Sa Majesté, vu l'Article 14 de l'Ordonnance de la Marine du mois d'Août, 1861, l'Article 3 de la Loi du Avril, 1825, les Articles 84 et 85 du Code Pénal, 65 et suivants du Décret du 24 Mars, 1852, 313 et suivants du Code Pénal Maritime, et l'Article 21 du Code Napoléon;

"Déclare:

"1. Il ne sera permis à aucun navire de guerre ou corsaire de l'un ou l'autre des belligérants d'entrer et de séjourner avec des prises dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée.

"2. Aucune vente d'objets provenant de prises ne pourra avoir lieu dans nos dits ports ou rades.

"3. Il est interdit à tout Français de prendre commission de l'une des deux parties pour armer des vaisseaux en guerre, ou d'accepter des lettres de marque pour faire le course maritime, ou de concourir d'une manière quelconque à l'équipement ou l'armement d'une navire de guerre ou corsaire de l'une des deux parties.

"4. Il est également interdit à tout Français, résidant en France ou à l'étranger, de s'enrôler ou prendre du service, soit dans l'armée de terre, soit à bord des bâtiments de guerre ou des corsaires de l'une ou de l'autre des belligérants.

"5. Les Français résidant en France ou à l'étranger devront également s'abstenir de tout fait qui, commis en violation des lois de l'empire ou du droit des gens, pourrait être considéré comme un acte hostile à l'une des deux parties, et contraire à la neutralité que nous avons résolu d'observer.

"Les contrevenants aux défenses et recommandations contenues dans la présente Déclaration seront poursuivis, s'il y a lieu, conformément aux dispositions de la Loi du 10 Avril, 1825, et aux Articles 84 et 85 du Code

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Pénal, sans préjudice de l'application qu'il pourrait y avoir lieu de faire aux dits contrevenants des dispositions de l'Article 21 du Code Napoléon, et des Articles 65 et suivants du Décret du 24 Mars, 1852, sur la marine marchande, 313 et suivants du Code Pénal pour l'armée de mer.

"Sa Majesté déclare, en outre, que tout Français qui ne se sera pas conformé aux présentes prescriptions ne pourra prétendre à aucune protection de son Gouvernement contre les actes ou mesures, quelqu'ils soient, que les belligérants pourraient exercer ou décréter.

"NAPOLEON.

"Le Ministre des Affaires Etrangères,
"E. THOUVENEL."

PRUSSIA.

The Minister of Commerce issued the subjoined Notification to the mercantile classes in the Baltic ports:—

(Translation.)

"It is my duty to make known to you that during the continuance of the conflict that has broken out among the North American States, the mercantile classes must abstain from all enterprises which are forbidden by the general principles of international law, and especially by the Ordinance of the 12th of June, 1856, which has relation to the Declaration of the 12th of April, 1856, upon the principles of maritime law. Moreover, I give you especial notice that the Royal Government will not extend to its subjects who may intermeddle in these conflicts by taking letters of marque, sharing in privateering enterprises, carrying merchandize contraband of war, or forwarding despatches, the benefit of its protection against any losses which may befall them through such transactions.

"The equipment of privateers in the ports of this country is forbidden by the laws of the land, as is known to the mercantile community."

BELGIUM.

(Translation.)

"Belgium has given its adhesion to the principles laid down in the Declaration of the Congress of Paris of April 16, 1856. This adhesion was published, together with the said Declaration (6th June, 1856) in the Belgian *Moniteur* of June 8, 1856.

"The commercial public is notified that instructions on this subject have been given to the judicial, maritime, and military authorities, warning them that privateers, under whatever flag or commission, or letters of marque, are not to be allowed to enter our ports except in case of imminent perils of the sea. The aforesaid authorities are charged, consequently, to keep a strict watch upon all such privateers and their prizes, and to compel them to put to sea again as soon as practicable.

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"The same authorities have been charged not to recognize the validity of any commission or letter of marque whatsoever. All persons subject to the laws of Belgium, who shall fit out or take any part in any privateering expedition, will therefore expose themselves to the danger, on the one hand, of being treated as pirates abroad, and, on the other, to prosecution before Belgian tribunals with all the rigour of the laws."

NETHERLANDS.

(Translation.) "*The Hague.*

"In obedience to the King's orders, the Ministers for Foreign Affairs, of Justice, and of the Marine, present to the knowledge of all whom it may concern, that to guard against probable difficulties during the doubtful complications in the United States of North America, no privateers under any flag, or provided with any commission or letters of marque, or their prizes, shall be admitted into our havens or seaports, unless in case of distress, and that requisite orders be issued that under any circumstances such privateers and their prizes be required to go again to sea as speedily as possible.

"The Ministers above named."

(Translation.) "*The Hague.*

"The Minister for Foreign Affairs and the Minister of Justice, by the King's authority, warn, by these presents, all inhabitants of the Kingdom, that during the existing disturbances in the United States of America they in nowise take part in privateering, because the Netherlands Government has acceded to the Declaration upon maritime rights set forth by the Paris Conference of 1856, whereby, among other matters, privateering is abolished, and no recognition of commissions obtained for letters of marque is permitted. Also that commissions and letters of marque, in conflict with the aforesaid prohibition, which may issue to inhabitants of the Netherlands cannot have legal effect in behalf of the King's subjects, or of any abroad who are in subjection to the laws of the Kingdom. Those who, under such circumstances, engage in privateering or lend their aid in it to others, will be considered as pirates, and prosecuted according to law in the Netherlands, and subjected to the punishment provided for the commission of such offences.

"The Ministers above named."

(Translation.) "*The Hague, June* 1861.

"The Minister for Foreign Affairs, apprised by a communication from the Minister of Marine that the King had authorized the naval force in the West Indies to be seasonably strengthened by His Majesty's steam-frigate *Zealand* and the screw-propellers *Dyambi* and *Vesuvius*, for the purpose of giving protection to the trade and navigation of the Netherlands during the contest which seems to be in existence in the United States of North America, wherever it may be desired,

accordingly esteems it to be his duty to direct the attention of ship-masters, consignees, and freighters, to the peril to which their insurance against loss will be exposed by any violation of the obligations imposed on neutral Powers to respect actual blockades, and not to carry contraband of war, or despatches of belligerents.

Note.

"In these cases they will be subject to all the resulting losses that may follow, without the benefit of any protection or intervention on the part of His Majesty's Government. Of which take notice.

"The Minister above named."

SPAIN.

(Translation.) "*Palace, June* 17, 1861.

"Taking into consideration the relations which exist between Spain and the United States of America, and the desirability that the reciprocal sentiments of good understanding should not be changed by reason of the grave events which have taken place in that Republic, I have resolved to maintain the most strict neutrality in the contest begun between the Federal States of the Union and the States confederated at the South; and in order to avoid the damage which might accrue to my subjects and to navigation and commerce, from the want of clear provisions to which to adjust their conduct, I do decree the following:—

"Article 1. It is forbidden in all the ports of the Monarchy to arm, provide, or equip any privateer vessel, whatever may be the flag she displays.

"Art. 2. It is forbidden in like manner to the owners, masters, or captains of merchant-vessels to accept letters of marque, or contribute in any way whatsoever to the armament or equipment of vessels of war or privateers.

"Art. 3. It is forbidden to vessels of war or privateers with their prizes, to enter or to remain for more than 24 hours in the ports of the Monarchy, except in case of stress of weather. Whenever this last shall occur, the authorities will keep watch over the vessel, and oblige her to go out to sea as soon as possible without permitting her to take in any stores except those strictly necessary for the moment, but in no case arms nor supplies for war.

"Art. 4. Articles proceeding from prizes shall not be sold in the ports of the Monarchy.

"Art. 5. The transportation under the Spanish flag of all articles of commerce is guaranteed, except when they are directed to blockaded ports. The transportation of effects of war is forbidden, as well as the carrying of papers or communications for belligerents. Transgressors shall be responsible for their acts, and shall have no right to the protection of my Government.

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" Art. 6. It is forbidden to all Spaniards to enlist in the belligerent armies, or take service on board of vessels of war or privateers.

" Art. 7. My subjects will abstain from every act which, in violation of the laws of the kingdom, can be considered as contrary to neutrality.

" Art. 8. Those who violate the foregoing provisions shall have no right to the protection of my Government, shall suffer the consequences of the measures which the belligerents may dictate, and shall be punished according to the laws of Spain.

" SIGNED WITH THE ROYAL HAND.

" The Minister of State,

" Saturnino Calderon Collantes."

PORTUGAL.

(Translation.) " *Palace of Necessidades, July* 29, 1861.

" It being proper, in view of the circumstances at present existing in regard to the United States of America, to carry into effect the principles established in the Declaration of Paris of April 16, 1856, made by the Representatives of the Powers that signed the Treaty of Peace of the 30th of March of that year, to which Declaration my Government acceded, and likewise, for the same reason, to adopt other measures which I deem opportune, I have been pleased after hearing the Council of State, to decree as follows:—

" Article 1. In all the ports and waters of this Kingdom, as well on the continent and in the adjacent islands as in the ultramarine provinces, Portuguese subjects and foreigners are prohibited from fitting out vessels destined for privateering.

" Art. 2. In the same ports and waters referred to in the preceding Article is, in like manner, prohibited the entrance of privateers and of the prizes made by privateers, or by armed vessels.

" The cases of overruling necessity (*força maior*), in which, according to the law of nations, hospitality is indispensable, are excepted from this regulation, without permission, however, being allowed, in any manner, for the sale of any objects proceeding from prizes.

" The Ministers and Secretaries of State in all the Departments will thus understand, and cause it to be executed.

(Signed) " KING.

(Countersigned)

" Marquez de Loulé.

" Alberto Antonio de Moraes Carvalho.

" Visconde de Sa da Bandeira.

" Carlos Bento da Silva.

" Thiago Augusto Velloso de Horta.

" Antonio Jose d'Avila."

Note.

HAWAIIAN ISLANDS.

"*Kailua, August* 26, 1861.

"Be it known to all whom it may concern that we, Kamehameha IV, King of the Hawaiian Islands, having been officially notified that hostilities are now unhappily pending between the Government of the United States and certain States thereof, styling themselves 'the Confederate States of America,' hereby proclaim our neutrality between the said contending parties.

"That our neutrality is to be respected to the full extent of our jurisdiction, and that all captures and seizures made within the same are unlawful, and in violation of our rights as a Sovereign.

"And be it further known that we hereby strictly prohibit all our subjects, and all who reside or may be within our jurisdiction, from engaging either directly or indirectly in privateering against the shipping or commerce of either of the contending parties, or rendering any aid to such enterprises whatever; and all persons so offending will be liable to the penalties imposed by the laws of nations, as well as by the laws of said States, and they will in no wise obtain any protection from us as against any penal consequences which they may incur.

"Be it further known that no adjudication of prizes will be entertained within our jurisdiction, nor will the sale of goods or other property belonging to prizes be allowed.

"Be it further known that the rights of asylum are not extended to the privateers or their prizes of either of the contending parties, excepting only in cases of distress or of compulsory delay by stress of weather or dangers of the sea, or in such cases as may be regulated by Treaty stipulation.

"Given at our marine residence of Kailua, this 26th day of August, A.D. 1861, and the seventh of our reign.

"By the King,

(Signed) "KAMEHAMEHA,

"By the King and Kuhina Nui,

"Kaahumanu.

"R. C. Wyllie."

BREMEN.

(Translation.)

"*Ordinance of Senate against Privateering.*

"The Senate finds it necessary, in regard to the events which have occurred in North America, to renew the regulations contained in its Ordinance of April 29, 1854, and accordingly makes the following notification for general observance:—

"1. All subjects of the State of Bremen are forbidden under severe

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penalties, both from meddling in any way with privateering and from taking any part therein, either by fitting out privateers themselves, or contributing through others to the same.

"2. The proper officers are ordered not on any account to allow the fitting out or provisioning of privateers, under whatever flag, or carrying any letters of marque, in any port of the Bremen territory, nor to admit into a Bremen port any such privateers, or the prizes made by them, except in cases of proved stress of weather at sea.

"Resolved at Bremen, in the Assembly of the Senate, on the 2nd, and published on the 4th of July, 1861."

HAMBURG.

(Translation.)

"*Ordinance against Privateering.*

"On the occasion of the events which have taken place in the United States of North America, the Senate reminds the public that, according to the notification of July 7, 1856, relative to the Declaration of the Congress of Paris on the application of maritime law in time of war, privateering is entirely abolished, and therefore it is prohibited to engage in any way in privateering, or to take part in it, either in fitting out privateers or by assisting others to do so. The proper orders have also been issued not to allow in Hamburg ports the fitting out or provisioning of privateers, under whatever flag, or furnished with whatever letters of marque, and not to admit into Hamburg ports or roadsteads any such privateers, with or without prizes, except in cases of proved stress of weather at sea.

"Given in the Assembly of the Senate, Hamburg, July 19, 1861."

It has been the usual practice of neutral Powers, at the commencement of a maritime war, to publish such Notifications as the above. An account of those issued in the war of 1854 will be found in Ortolan's *Diplomatie de la Mer*, vol. ii, Appendix viii; De Cussy's *Phases et Causes Célèbres du Droit Maritime*, vol. i, p. 211. The Proclamations of Neutrality issued by Great Britain in other wars, previous and subsequent, are given in the Appendix No. V to the Report of the Royal Commission on the Neutrality Laws, 1868, from which the foregoing documents are taken.

CHAPTER VII.

Complaints made by the American Government of the Proclamation of Neutrality.—Remonstrances of Mr. Adams; his Interviews with Earl Russell.—Ground taken by Mr. Seward.—Later Positions of the American Government.—Positions of the Government of Great Britain.—Observations.

Mr. Adams, who had been appointed by President Lincoln to succeed Mr. Dallas as Envoy and Minister Plenipotentiary at the British Court, arrived at Liverpool on the 13th May, and proceeded on the same evening to London. He presented his credentials on the 16th, and on the 18th had an interview with Lord John Russell. His subsequent report of this interview to the American Secretary of State is extremely copious, and was evidently composed with care, and the views which he expressed on behalf of his Government may be most fairly stated in his own words. After referring to the observations which had fallen from Lord John Russell, in conversation with Mr. Dallas (respecting which he had been instructed to seek for explanations), he asked—

"Whether it was the intention of Her Majesty's Ministers to adopt a policy which would have the effect to widen, if not to make irreparable, a breach which we believed yet to be entirely manageable by ourselves.

"At this point his Lordship replied by saying that there was no such intention. The clearest evidence of that was to be found in the assurance given by him to Mr. Dallas in the earlier part of the conversation referred to. With regard to the other portion, against which I understood him to intimate he had already heard from Lord Lyons that the

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President had taken exception, he could only say that he hardly saw his way to bind the Government to any specific course, when circumstances beyond their agency rendered it difficult to tell what might happen. Should the insurgent States ultimately succeed in establishing themselves in an independent position, of the probability of which he desired to express no opinion, he presumed, from the general course of the United States heretofore, that they did not mean to require of other countries to pledge themselves to go further than they had been in the habit of going themselves. He, therefore, by what he had said to Mr. Dallas, simply meant to say that they were not disposed in any way to interfere.

"To this I replied by begging leave to remark that, so far as my Government was concerned, any desire to interfere had never been imputed to Great Britain; but in her peculiar position it was deserving of grave consideration whether great caution was not to be used in adopting any course that might, even in the most indirect way, have an effect to encourage the hopes of the disaffected in America. It had now come to this, that without support from here, the people of the United States considered the termination of this difficulty as almost entirely a question of time. Any course adopted here that would materially change that calculation would inevitably raise the most unpleasant feelings among them. For independently of the absolute influence of Great Britain, admitted to be great, the effect of any supposed inclination on her part could not fail to be extensive among the other nations of Europe. It was my belief that the insurgent States could scarcely hope for sympathy on this side the Atlantic, if deprived of any prospect of it here. Hence, anything that looked like a manifestation of it would be regarded among us as inevitably tending to develope an ultimate separation in America; and, whether intended or not, the impression made would scarcely be effaced by time. It was in this view that I must be permitted to express the great regret I had felt on learning the decision to issue the Queen's Proclamation, which at once raised the insurgents to the level of a belligerent State, and still more the language used in regard to it by Her Majesty's Ministers in both Houses of Parliament before and since. Whatever might be the design, there could be no shadow of doubt that the effect of these events had been to encourage the friends of the disaffected here. The tone of the press and of private opinion indicated it strongly. I then alluded more especially to the brief report of the Lord Chancellor's speech or Thursday last, in which he had characterized the rebellious portion of my country as a belligerent State, and the war that was going on as *justum bellum*.

"To this his Lordship replied that he thought more stress was laid upon these events than they deserved. That fact was that a necessity seemed to exist to define the course of the Government in regard to the participation of the subjects of Great Britain in the impending conflict. To that end the legal questions involved had been referred to those officers most conversant with them, and their advice had been taken in shaping

the result. Their conclusion had been that, merely as a question of *fact*, a war existed. A considerable number of the States, at least seven, occupying a wide extent of country, were in open resistance, whilst one or more of the others were associating themselves in the same struggle, and as yet there were no indications of any other result than a contest of arms more or less severe. In many preceding cases, much less formidable demonstrations had been recognized. Under such circumstances is seemed scarcely possible to avoid speaking of this in the technical sense as *justum bellum*, that is, a war of two sides, without in any way implying an opinion of its justice, as well as to withhold an endeavour, so far as possible, to bring the management of it within the rules of modern civilized welfare. This was all that was contemplated by the Queen's Proclamation. It was designed to show the purport of existing laws, and to explain to British subjects their liabilities in case they should engage in the war. And however strongly the people of the United States might feel against their enemies, it was hardly to be supposed that in practice they would now vary from their uniformly humane policy heretofore in endeavouring to assuage and mitigate the horrors of war.

"To all which I answered that, under other circumstances, I should be very ready to give my cheerful assent to this view of his Lordship's. But I must be permitted frankly to remark that the action taken seemed, at least to my mind, a little more rapid than was actually called for by the occasion. It might be recollected that the new Administration had scarcely had sixty days to develope its policy; that the extent to which all departments of the Government had been demoralized in the preceding administration was surely understood here, at least in part: that the very organization upon which any future action was to be predicated was to be renovated and purified before a hope could be entertained of energetic and effective labour. The consequence had been that it was but just emerging from its difficulties and beginning to develop the power of the country to cope with this rebellion, when the British Government took the initiative, and decided practically that it is a struggle of two sides. And, furthermore, it pronounced the insurgents to be a belligerent State before they had ever shown their capacity to maintain any kind of warfare whatever, except within one of their own harbours, and under every possible advantage. It considered them a marine power before they had ever exhibited a single privateer on the ocean. I said that I was not aware that a single armed vessel had yet been issued from any port under the control of these people. Surely this was not the case in the instance which had been relied upon in his speech by his Lordship as authority for the present action. There the Greeks, however small as a people, had long been actively and effectually waging war before the interposition of Great Britain, and, to use the language of the Government, as quoted by himself, had 'covered the sea with cruisers.' It did seem to me, therefore, as if a little more time might have been taken to form a more complete estimate of the relative force

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of the contending Powers, and of the probabilities of any long-drawn issue. And I did not doubt that the view taken by me would be that substantially taken both by the Government and the people of the United States. They would inevitably infer the existence of an intention more or less marked to extend the struggle. For this reason it was that I made my present application to know whether such a design was or was not entertained. For in the alternative of an affirmative answer it was as well for us to know it, as I was bound to acknowledge in all frankness that in that contingency I had nothing further left to do in Great Britain. I said this with regret, as my own feelings had been and were of the most friendly nature.

"His Lordship replied by an assurance that he participated in those feelings; neither did he see the action that had been thus far taken at all in the light in which I saw it. He believed that the United States, in their own previous history, had furnished examples of action taken quite as early as that now complained of. He instanced two cases. The first I do not now remember, for it seemed to me not important at the time; the other was the insurrection in Hungary under Kossuth, at which period, he believed, they had gone so far as actually to send an agent to that country with a view to recognition, and that to the great dissatisfaction and against the remonstrances of Austria.

"I replied only to the second case, by remarking that the incidents attending that affair were not fresh in my mind, neither was I sure that I ever knew the whole action of the Government; but it was my impression that the object of the mission was only confined to the acquisition of the facts necessary to form an opinion, and that, after they were obtained, no public step of any kind had been taken. Neither could I myself recollect an instance in which ample time had not been given by the United States for the development of events sufficiently decisive to justify any action that might have followed; for I begged it to be understood that the Government did not mean at all to deny that there were cases in which recognition of a revolutionary government might be both expedient and proper. The rule was clear, that whenever it became apparent that any organized form of society had advanced so far as to prove its power to defend and protect itself against the assaults of enemies, and at the same time to manifest a capacity to maintain binding relations with foreign nations, then a measure of recognition could not be justly objected to on any side. The case was very different when such an interference should take place, prior to the establishment of the proof required, as to bring about a result which would not probably have happened but for that external agency.

* * * * * * *

"I proceeded to observe that I had come to England prepared to present the views of my Government on the general question, and that I should have done so in full but for the interposition of this more immediate despatch. At the present moment I should touch only upon one point

in connection with the acknowledgment of the insurgents even as a belligerent State. It seemed necesary to call the attention of his Lordship to the fact which must be obvious to him, that as yet they had not laid any foundation for Government solid enough to deserve a moment's confidence. They had undertaken to withdraw certain States from the Government by an arbitrary act which they called Secession, not known to the Constitution, the validity of which had at no time been acknowledged by the people of the United States, and which was now emphatically denied; but not content with this, they had gone on to substitute another system among themselves, avowedly based upon the recognition of this right of States to withdraw or secede at pleasure. With such a Treaty (*sic*), I would ask, where could be the vested obligation of Treaties with foreign Powers, of the payment of any debts contracted, or, indeed, of any act performed in good faith by the common authority for the time being established? For my own part, I fully believed that such a system could not deserve to be denominated, in any sense, a Government; and therefore I could not but think any act performed here, having a tendency to invest it in the eye of the world with the notion of form and substance, could be attended only with the most complete disappointment to all the parties connected with it.

"His Lordship here interposed by saying that there was not, in his opinion, any occasion at present for going into this class of arguments, as the Government did not contemplate taking any step that way. Should any such time arrive in the future, he should be very ready to listen to every argument that might be presented against it on the part of the United States. At this moment he thought we had better confine ourselves to the matter immediately in hand."[1]

The act of the British Government in declaring its neutrality had been "a little more rapid than was actually called for by the occasion." "It did seem as if a little more time might have been taken." It "had a tendency to invest" the Confederate Government "in the eyes of the world with the notion of form and substance;" and would probably lead the Government and people of the United States to suspect the existence of an intention to extend the struggle in which they were engaged. This was the whole substance of Mr. Adams's complaint. Was there, he asked, such an intention? The answer was prompt and decided. "There was no such intention." "A necessity seemed to exist to define the course of the Government in

[1] *Mr. Adams to Mr. Seward*, 21st May, 1861.

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regard to the participation of the subjects of Great Britain in the impending conflict. This was all that was contemplated in the Queen's Proclamation. It was designed to show the purport of existing laws, and to explain to British subjects their liabilities in case they should engage in the war."

At a subsequent interview Mr. Adams, in obedience, as he conceived, to the instructions of his Government, stated his objections over again :—

"I descanted upon the irritation produced in America by the Queen's Proclamation, upon the construction almost universally given to it, as designed to aid the insurgents by raising them to the rank of a belligerent State, and upon the very decided tone taken by the President in my despatches in case any such design was really entertained. I added, that from my own observation of what had since occurred here, I had not been able to convince myself of the existence of such a design.

* * * * *

"I ventured to repeat my regret that the Proclamation had been so hastily issued, and adverted to the fact that it seemed contrary to the agreement said to have been proposed by Mr. Dallas and concurred in by his Lordship, to postpone all action until I should arrive, possessed with all the views of the new administration. But still, though I felt that much mischief had ensued in the creation of prejudices in the United States, not now easy to be eradicated, I was not myself disposed in any part of my conduct to aggravate the evil. My views had been much modified by opportunities of more extended conversation with persons of weight in Great Britain, by the improved tone of the press, by subsequent explanations in Parliament, by the prohibition of all attempts to introduce prizes into British ports, and, lastly, by the unequivocal expression of sentiment in the case of Mr. Gregory when the time came for him to press his motion of recognition. I trusted that nothing new might occur to change the current again, for nothing was so unfortunate as the effect of a recurrence of reciprocal irritations, however trifling, between countries, in breaking up the good understanding which it was always desirable to preserve.

"His Lordship agreed to this, but remarked that he could not but think the complaint of the Proclamation, though natural enough perhaps at this moment, was really ill-founded. He went over the ground once more which he occupied in the former interview—the necessity of doing something to relieve the officers of their ships from the responsibility of treating these persons as pirates if they met them on the seas. For his part, he could not believe the United States would persevere in the idea of hanging them, for it was not in consonance with their well-known character. But what would be their own situation if they should be

found practising upon a harsher system than the Americans themselves ? Chap. VII.

" Here was a very large territory—a number of States—and people counted by millions, who were in a state of actual war. The fact was undeniable, and the embarrassment unavoidable. Under such circumstances, the Law Officers of the Crown advised the policy which had been adopted. It was designed only as a preventive to immediate evils. The United States should not have thought hard of it. They meant to be entirely neutral.

" I replied that we asked no more than that. We desired no assistance. Our objection to this act was, that it was practically not an act of neutrality. It had depressed the spirits of the friends of the Government. It had raised the courage of the insurgents. We construed it as adverse, because we could not see the necessity of such immediate haste. These people were not a navigating people. They had not a ship on the ocean. They had made no prizes, so far as I knew, excepting such as they had caught by surprises. Even now, I could not learn that they had fitted out anything more than a few old steamboats, utterly unable to make any cruise on the ocean, and scarcely strong enough to bear a cannon of any calibre. But it was useless to go over this any more. The thing was now done. All that we could hope was that the later explanations would counteract the worst effects that we had reason to apprehend from it; and, at any rate, there was one compensation, the act had released the Government of the United States from responsibility for any misdeeds of the rebels towards Great Britain. If any of their people should capture or maltreat a British vessel on the ocean, the reclamation must be made only upon those who had authorized the wrong. The United States would not be liable." [1]

On the 21st June, Mr. Adams reports the impression which had been created in this country by the news that the Proclamation had excited feelings of irritation in the United States. Everybody was surprised at it—or, as Mr. Adams preferred to say, everybody " affected" to be surprised at it. And to those who have read the foregoing narrative, this emotion will probably appear extremely natural. " Whilst people of all classes unite in declaring that such a measure was unavoidable, they are equally earnest in disavowing any inferences of want of good-will which may have been drawn from it. They affect to consider our complaints as very unreasonable. . . . . I am now earnestly assured on all sides

[1] *Mr. Adams to Mr. Seward*, 14th June, 1861.

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that the sympathy with the Government of the United States is general; that the indignation felt in America is not founded on reason; that the British desire only to be perfectly neutral, giving no aid nor comfort to the insurgents. I believe that this sentiment is now growing to be universal. It inspires Her Majesty's Ministers, and is not without effect on the Opposition. Neither party would be so bold as to declare its sympathy with a cause based on the extension of slavery, for that would at once draw upon itself the indignation of the great body of the people." He believed at the same time that the growth of an active sympathy with the United States would much depend on the success of their arms.[1] As to the popular feeling in America, he expressed to Lord John Russell a few days afterwards his confidence that it "would subside the moment all the later action on this side was known. There was a single drawback remaining—the despatch of reinforcements to Canada." "He" (Lord J. Russell) "said, that was a mere precaution against times of trouble."[2]

I have referred particularly to these passages because, occurring very soon after the issue of the Proclamation, they show in what light it was regarded at the time by the British Secretary of State for Foreign Affairs on the one hand, and on the other by a Minister of so much sense and moderation, yet so thoroughly imbued with the views of his own Government, as Mr. Adams. The Proclamation frequently appeared as a subject of complaint—generally entangled with other subjects of complaint—in the later correspondence between the two Governments: by degrees it took the shape of a substantial grievance: at last it towered into a grievance of prodigious magnitude. I do not propose to pursue the course of the controversy. What is material to this history is the general attitude assumed with respect

[1] *Mr. Adams to Mr. Seward*, 21st June, 1861.
[2] *Mr. Adams to Mr. Seward*, 28th June, 1861.

to this question by the Government of the United States.

Mr. Seward's earlier despatches to the Legations in Paris and London are clear and explicit enough, and were probably a faithful expression of popular sentiment in the United States. On the 21st May he wrote to Mr. Adams to suspend all intercourse, official and unofficial, with the British Government, if it should have any communication whatever with the agents of the Confederacy—an order which Mr. Adams seems to have had the prudence to disobey. A concession of belligerent rights to the revolted States "would not pass unquestioned." As to Confederate privateers, "this is a question exclusively our own. We treat them as pirates." "If Great Britain shall choose to recognize them as lawful belligerents and give them shelter from our pursuit and punishment, the laws of nations afford an adequate remedy."[1]

On the 28th, Mr. Dayton was told that "the United States cannot for a moment allow the French Government to rest under the delusive belief that they will be content to have the Confederate States recognized as a belligerent Power by States with which this nation was at amity. No concert of action among foreign States so recognizing the insurgents can reconcile the United States to such a proceeding, whatever may be the consequences of resistance."[2]

On the 15th June, Lord Lyons and M. Mercier, the French Minister at Washington, had an interview with the Secretary of State, at which they proposed to read to him instructions which they had received from their respective Courts. Mr. Seward, having informed himself of the substance of these instructions, declined to hear them, and communicated the reasons of his refusal to the American Ministers at London and Paris. Of the British instructions he wrote:—

[1] *Mr. Seward to Mr. Adams*, 21st May, 1861.

[2] *Mr. Seward to Mr. Dayton*, 28th May, 1861.

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"That paper purports to contain a decision at which the British Government has arrived, to the effect that this country is divided into two belligerent parties, of which this Government represents one, and that Great Britain assumes the attitude of a neutral between them.

"This Government could not, consistently with a just regard for the sovereignty of the United States, permit itself to debate these novel and extraordinary positions with the Government of Her Britannic Majesty; much less can we consent that that Government shall announce to us a decision derogating from that sovereignty, at which it has arrived without previously conferring with us upon the question. The United States are still solely and exclusively sovereign within the territories they have lawfully acquired and long possessed, as they have always been. They are living under the obligations of the laws of nations, and of Treaties with Great Britain, just the same now as heretofore; they are, of course, the friend of Great Britain, and they insist that Great Britain shall remain their friend now just as she has hitherto been. Great Britain, by virtue of these relations, is a stranger to parties and sections in this country, whether they are loyal to the United States or not, and Great Britain can neither rightfully qualify the sovereignty of the United States, nor concede, nor recognize any rights, or interest, or power of any party, State, or section, in contravention to the unbroken sovereignty of the Federal Union. What is now seen in this country is the occurrence, by no means peculiar, but frequent in all countries, more frequent even in Great Britain than here, of an armed insurrection engaged in attempting to overthrow the regularly constituted and established Government. There is, of course, the employment of force by the Government to suppress the insurrection, as every other Government necessarily employs force in such cases. But these incidents by no means constitute a state of war impairing the sovereignty of the Government, creating belligerent sections, and entitling foreign States to intervene or to act as neutrals between them, or in any other way to cast off their lawful obligations to the nation thus for the moment disturbed. Any other principle than this would be to resolve Government everywhere into a thing of accident and caprice, and ultimately all human society into a state of perpetual war." [1]

To Mr. Dayton :—

"It is erroneous, so far as foreign nations are concerned, to suppose that any war exists in the United States. Certainly there cannot be two belligerent Powers where there is no war. There is here, as there has always been, one political power, namely, the United States of America, competent to make war and peace, and conduct commerce and alliances with all foreign nations. There is none other, either in fact, or recognized by foreign nations. There is, indeed, an armed sedition seeking

[1] *Mr. Seward to Mr. Adams*, 19th June, 1861.

to overthrow the Government, and the Government is employing military and naval forces to repress it. But these facts do not constitute a war presenting two belligerent Powers, and modifying the national character, rights, and responsibilities, or the characters, rights, and responsibilities of foreign nations. It is true that insurrection may ripen into revolution, and that revolution thus ripened may extinguish a previously existing State, or divide it into one or more independent States, and that if such States continue their strife after such division, then there exists a state of war affecting the characters, rights, and duties of all parties concerned. But this only happens when the revolution has run its successful course." [1]

The passages which have been quoted will admit but one construction. They were a rejection, in the most unqualified form, of the proposition that the existence of war is a simple matter of fact, to be ascertained as other facts are—and an assertion, in the most unqualified form, of the dogma that there can be no war, so far as foreign nations are concerned, and, therefore, no neutrality, so long as there is a sovereignty *de jure*. All circumstances showing the scale upon which the contest was carried on were summarily rejected from consideration. The fact that the people of the Confederate States were not in obedience to the Government of the United States, but in arms against it, and obeyed another Government of their own, was likewise to be rejected from consideration. There could be no war, because the United States were sovereign. In a contest between a sovereign and his subjects, foreign nations could not assume the position of neutrals. This condition of affairs must last until the revolution should have "run its successful course," and the Union should have been divided into two or more communities completely independent of each other. If after such division the strife between them should be continued, there would then be a war. Before it there could be no war. In short, a recognition of belligerency can never properly precede—it can only follow—a recognition of independence.

[1] *Mr. Seward to Mr. Dayton*, 17th June, 1861.

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These positions were perfectly clear and consistent. They were also erroneous, unreasonable, flatly opposed to the settled opinion and practice of nations, and especially to the settled opinion and practice of the United States. Although asserted in Mr. Seward's despatches, which were afterwards published in America, the Government did not at that time attempt practically to enforce them; but it is clear that they continued to exercise an influence on the course of the Government, and still more on that of public opinion.[1] When, however, the question entered the stage of controversy, they were too plainly untenable to be maintained. Endeavours were then made to place it on a different ground.

Stripped of mere rhetoric, and reduced (as far as it admits of this) to the form of tangible propositions, the case alleged against England on behalf of the United States in the later despatches was in substance as follows:—

1. That at the date of the Queen's Proclamation of neutrality there was in fact no war, or at least no maritime war, between the United States and the people of the revolted States.

[1] They re-appear, indeed, in a despatch of Mr. Seward's (in which he reviews the case and re-states the American claim) so late as 1867:—

"It will be found, we think, that all nations which have desired to practice justice and friendship towards a State temporarily disturbed by insurrection, have forborne from conceding belligerent privileges to the insurgents in anticipation of their concession by the disturbed State itself. A nation which departs from this duty always practically commits itself as an ally to the insurgents, and may justly be held to the responsibilities of that relation."—*Mr. Seward to Mr. Adams*, 12th January, 1867.

Since it must always be an undecided question, until the contest is over, whether a revolt will prove to be temporary or permanent, this is equivalent to saying that to recognize a revolted community as belligerent before it has been acknowledged as such by its original Sovereign, is always a breach of international duty, which converts the recognizing Power into an ally of the one and an enemy of the other—a proposition truly amazing in the mouth of an American statesman.

2. That after it there was a maritime war, of which the Proclamation was the cause.

3. That, by the Queen's Proclamation, acts done in British ports were made lawful, which would otherwise have been unlawful and criminal; and that it thus enabled the Confederates to procure ships of war and send them to sea, which otherwise they could not have done, and to obtain goods and money in England.

4. That it enabled these ships to cruise, which otherwise they would have been unable to do.[1]

5. That, the existence of a state of war, even at sea, does not by itself justify a foreign Power in declaring itself neutral. That it must further be shown that such a declaration is "necessary," in order to ward off some positive inconvenience from the foreign Power or its subjects. That the foreign Power is not to be the sole judge whether it has reason to apprehend such an inconvenience, and that this may be contested by the Sovereign whose subjects are in arms against him. That

[1] "It was my wish to maintain—

"1. That the act of recognition by Her Majesty's Government of insurgents as belligerents on the high seas, before they had a single vessel afloat, was precipitate and unprecedented;

"2. That it had the effect of creating those parties belligerents after the recognition, instead of acknowledging an existing fact;

"3. That this creation has since been effected exclusively from the ports of Her Majesty's kingdom and its dependencies, with the aid and co-operation of her Majesty's subjects."—*Mr. Adams to Earl Russell*, 20th May, 1865.

"The assumed belligerency of the insurgents was a fiction—a war on paper only, not in the field—like a paper blockade, the anticipation of supposed belligerency to come, but which might never have come if not thus anticipated and encouraged by Her Majesty's Government. Indeed, as forcibly put by Mr. Adams, the Queen's Declaration had the effect of creating posterior belligerency instead of merely acknowledging an actual fact. . . . . .

"In virtue of the Proclamation, maritime enterprises in the ports of Great Britain which would otherwise have been piratical, were rendered lawful; and thus Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury, of the insurgent Confederacy."—*Mr. Fish to Mr. Motley*, 25th September, 1869.

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in the absence of "necessity" such a declaration is "premature;" and that being premature it is "wrongful" and "injurious," and warrants a demand for "redress and indemnity."

6. That no such necessity existed at the time of the issue of the Queen's Proclamation, nor afterwards; or at any rate that none would have existed afterwards but for the issue of the Proclamation.[1]

This is, I think, a fair and true statement of the propositions which may be extracted from the despatches of the American Government.

The case of the British Government is contained in the counter-propositions which follow:—

1. That a war carried on by a blockade of ports and coasts on the one side, and on the other by cruisers and privateers, is a maritime war; and that it is not the less a maritime war because there is a disparity of strength—because the blockade is successful, and the cruisers and privateers are few. That such a war had been virtually

[1] "The issue between the United States and Great Britain, which is the subject of the present correspondence, is not upon the question whether a civil war has recently existed in the United States, nor is the issue upon that other question, whether such a civil war was actually existing there at the date of the Queen's Proclamation of neutrality. . . . . What is alleged on the part of the United States is, that the Queen's Proclamation, which by conceding belligerent rights to the insurgents lifted them up for the purpose of insurrection to an equality with the nation which they were attempting to overthrow, was premature because it was unnecessary, and was in its operation unfriendly because it was premature. . . . . The United States remain of opinion that the Proclamation has not been justified on any ground of either necessity or moral rights; that, therefore, it was an act of wrongful intervention, a departure from the obligations of existing Treaties, and without sanction of the law of nations."—*Mr. Seward to Lord Stanley*, 14th January, 1867.

"This Government insisted in the beginning, and has continually insisted, that the assumption of that attitude, unnecessarily and prematurely, would be an injurious proceeding, for which Great Britain would immediately come under a full responsibility to justify it or to render redress and indemnity."—*Mr. Seward to Mr. Adams*, 27th August, 1866.

See also *Mr. Fish to Mr. Motley*, 25th September, 1869.

declared, and was in existence and in active operation, before the Proclamation was issued, and for several weeks at least before it could have been known in the Confederate States, and therefore could not possibly have been created by it.

2. That the Proclamation did not make lawful any acts within British territory which would otherwise have been unlawful; nor enable, nor in any way assist, the Confederates to procure ships of war in England or elsewhere, or to send them to sea; and that a recognized belligerent is no more able to do this in England than an unrecognized belligerent is.[1]

3. That the toleration extended to the Confederate cruisers consisted substantially in not excluding them from British ports, and in suffering them to remain there for a limited time, and to purchase in the market limited supplies of provisions and of coal. That Great Britain had a right to accord this permission to vessels which were not piratical nor engaged in any enterprise prohibited by the law of nations. That she would have had the same right had no declaration of neutrality been issued. That nothing could be more unreasonable than to expect her to treat as pirates persons who were not such, and who were not so treated by the American Government itself. And that the permission accorded to them was likewise accorded to Federal cruisers, and by them far more largely used.

4. That, given the existence of a state of war, any foreign Power has a right to declare itself neutral, whose territory the war may approach, or whose subjects may be brought into contact with it. That the question

[1] Nor does such a Proclamation, as some writers seems to imagine, give to the revolted community any *locus standi* in the Courts of the neutral country, or any power which it would not otherwise have to enter into contracts there, to buy goods or borrow money, whether for the purposes of the war or for any other purpose. In the eye of the law it continues to be what it was before—a mass of population in arms against the Government of a friendly State.

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whether any inconvenience, or how much, is to be apprehended from not making such a declaration, is not a question which either belligerent has a right to discuss with the neutral, but one of which the neutral is the best and sole judge. That in no case and under no circumstances can a declaration of neutrality be a wrong to a Power which is itself exercising, or has assumed to exercise, against neutrals, any of the *jura belli*.

5. But lastly, that, at the time of declaring itself neutral, the British Government had in fact sufficient reason to apprehend inconvenience from remaining silent, and to assume formally and at once the position of a neutral, which must have been assumed sooner or later.

The reader of this narrative will be able to judge for himself between these two chains of propositions—which of them is the truer in fact and the sounder in principle. He will be able to judge whether the Confederates were, or were not, a mere body of armed insurgents, without organization, without a Government, without judicial tribunals, without seaports, without resources; and whether the contest was more correctly described by the American Secretary of State as "an armed sedition," such as is "frequent in all countries," or by the Supreme Court as "the greatest of civil wars." He will have observed in what light it was practically regarded by the Federal Administration, by the Federal Courts, by the people of the North, by the people of the South, and by Europe. And he will be able to decide whether, in the presence of such a contest, a maritime nation, with whom both North and South had incessant and profitable intercourse, had or had not the right, without incurring even an imputation of unfriendliness or of undue haste, to declare itself neutral.

It is evident, however, that the real complaint against Great Britain was not that she *declared herself* neutral, but that she *was* so. To contend that she ought to have

excluded Confederate ships from her ports, denied them the hospitalities due by the general custom of nations to all vessels not tainted with piracy, and treated them as pirates, whilst Federal cruisers were permitted to enter and supply themselves freely—what is this but to maintain that she had not in this contest the right to be neutral? I affirm that to be neutral was her right and duty.[1]

The American Government has represented itself as a sufferer by this neutrality. Had this been really so, to be neutral would none the less have been the right and duty of Great Britain. But was it so? What the United States really lost by it has never been distinctly stated. But it is easy to see what they gained. They gained the liberty to exercise against British ships on the high seas the rights of visit and search, of capturing contraband, and of blockade—rights which spring solely from the relation of belligerent and neutral, and which the neutral acknowledges by recognizing the existence of that relation. The advantages reaped in maritime war from the exercise of such rights fall, where there is a disparity of force, into the hands of the stronger belligerent; where the disparity is great, he has a monopoly of them, for he is able to shut up his

[1] In December 1864, Mr. Seward wrote to the Brazilian Chargé d'Affaires:—

"This Government disallows your assumption that the insurgents of this country are a lawful naval belligerent; and on the contrary it maintains that the ascription of that character by the Government of Brazil to insurgent citizens of the United States, who have hitherto been, and who still are, destitute of naval forces, ports, and courts, is an act of intervention in derogation of the law of nations, and unfriendly and wrongful as it is manifestly injurious to the United States."

It is plain that the real grievance was not that the belligerents were recognized as belligerents *too soon*, but that they were so recognized *at all*. The stress laid on the *date* of the British Declaration is an endeavour to give the complaint something like plausibility, and to point against Great Britain in especial an accusation which really includes other neutral nations.

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enemy in port and drive him from the sea. Did not the Government of the United States claim these rights? Did it not exert them—freely, largely, even rigorously? Were they of no advantage to it? Did it ever propose to forego them? There is a lurking idea, I think, in the minds of some Americans, that two parties are not necessary to a war, and that they ought to have been suffered to act as belligerents while refusing to the European Power the right to be neutral. But the difficulty of giving an air of reasonableness to the idea has prevented it from being plainly expressed.

For myself I have never been able to understand how the American Government could seriously insist on a grievance which its own publicists are almost unanimous in disclaiming, and which is indeed the most groundless and unsubstantial that one nation ever alleged against another.[1] I am unable to comprehend how it could be premature to provide for a state of circumstances which was actually existing at the time, or precipitate to announce in May a conclusion on which the President himself had begun to act in April; how it can be deliberately maintained by any one that such chimerical hopes as the Confederates may possibly have built, for the moment, on the Queen's Proclamation exercised any material influence on the fortunes of the war; or how, if that were granted, the British Government could be held justly answerable for the chimeras raised in sanguine imaginations by an act which was itself lawful and reasonable. So unsubstantial, indeed, is this complaint, that we see it in the

[1] See Lawrence, *Commentaire sur les Eléments du Droit International, &c.*, vol. i, p. 185.—"Les déclarations de neutralité faites par la France et la Grande Bretagne en Mai et en Juin 1861, et qui furent suivies par celles d'autres puissances, ne sont donc que les corollaires des actes du Gouvernement Américain. Celui-ci a été en effet le premier à établir les droits de guerre dans les Etats séparés."

See also Woolsey, *On the Alabama Claims*, 1869, and an article in the *American Law Review*, October 1869, p. 36.

American despatches continually shifting its position, changing its shape, and eluding the grasp of argument by studied subtleties of expression. Sometimes the assumption of neutrality in this contest is a "wrongful and injurious" act; sometimes it is only "unfriendly in its operation," or "suggests the suspicion of an unfriendly motive," or is "a sign of a purpose of unfriendliness;" again it re-appears as a wrong, and as the foundation of a specific claim for damages, and finally becomes nothing less than "a virtual act of war." We are sometimes told that the issue is not whether at the date of the Proclamation there was a war between the Union and the revolted States or no: we ask, What then is the issue?—and are presented with an argument to prove that the contest was not a war, but a mere insurrection; that though the President himself treated it as a war, and assumed to exercise belligerent rights, he did not do this "expressly or in form," and might, had he thought fit, have abstained from exercising them.[1]

[1] "The Supreme Court of the United States and that of the District of Columbia, in their opinions did not pretend, admit, or imply, that the President's aforesaid Proclamation, expressly and in form declared or recognized a state of civil war. . . . . The Courts reached their conclusion that a state of civil war was existing at the time of the maritime captures which were under consideration, by processes of reason and argument. . . . . Lord Stanley repeats from Earl Russell, and re-affirms, that 'Her Majesty's Government had but two courses open to them on receiving intelligence of the President's Proclamation,' namely, either that of acknowledging the blockade and proclaiming the neutrality of Her Majesty, or that of refusing to acknowledge the blockade and insisting upon the right of Her Majesty's subjects to trade with the ports of the South where the Government of the United States could exercise no fiscal control at that time.

"With due respect I must demur to this statement. The disturbance being, at the time referred to, officially and legally held by the Government of the United States to be a local insurrection, this Government had a right to close the the ports in the States within the scene of the insurrection, by municipal law, and to forbid strangers from all intercourse therewith, and to use the armed and naval forces for that purpose. A blockade was legitimately declared to that end; and, until the state of civil war should actually have developed, the existence of a blockade

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The President need not have instituted a blockade: foreign nations, therefore, were bound to act as if he had not instituted one. It is impossible to speak respectfully, or even seriously, of an argument conducted in this fashion. It is unworthy of a manly and honest reasoner; it is strangely unsuited to the Government of a great people.

would have conferred no belligerent rights upon the insurgents. In choosing the blockade as a form of remedy less oppressive than the closing of the ports by statute, the United States might perhaps have come under an obligation to respect any just rights and interests of aliens which might have been infringed. There was, however, no just ground of apprehension on that subject, for the history of the time shows that those rights were in all cases inviolately respected."—*Mr. Seward to Lord Stanley*, 14th January, 1867.

CHAPTER VIII.

Negotiations respecting International Maritime Law, and the Declaration of Paris, 1856.—Conventions Proposed by the Government of the United States to Great Britain and France.—Failure of the Negotiations.—Informal Communications with the Confederate States on the same Subject.

THE negotiation which forms the subject of this chapter proved abortive, and has not an important place in the history of the war. It has, however, a place in that history, and cannot, therefore, be left unnoticed. The circumstances which led to it may be briefly stated.

The Declaration on Maritime Law, signed at the close of the Conferences of Paris in 1856, had received the assent of by far the larger number of civilized nations. Of the propositions embraced in it,[1] the fourth was already a settled maxim of public law, and the third had nearly reached the same stage; but the rule that enemy's goods are protected by the neutral flag had been a subject of long controversy, whilst the employment of privateers had always been regarded as optional, though open to many objections. The United States had

[1] "1. Privateering is and remains abolished.

"2. The neutral flag covers enemy's goods, with the exception of contraband of war.

"3. Neutral merchandize, except contraband of war, is not liable to seizure under the flag of an enemy.

"4. Blockades to be binding must be effective, that is to say, maintained by a force sufficient really to prohibit (*interdire réellement*) access to the coast of the enemy."

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refused to become a party to it, judging that it was not for their interest to relinquish the liberty of using privateers, unless upon condition that all private property at sea, not contraband, should be declared exempt from capture. This condition had been embodied in a counter-proposal, which, from having been brought forward by Mr. Marcy, when Secretary of State, had become known as Mr. Marcy's Amendment. The counter-proposal, however, had been withdrawn, in April 1857, by Mr. Buchanan's Administration, which was understood to be unwilling to give up, even on these terms, the right of resorting to the issue of letters of marque.

The British and French Governments, at the beginning of the war, were desirous of ascertaining whether the principles of the Declaration would, if not formally accepted, be at any rate respected in practice by the two belligerents. It was with this view that Lord Lyons and M. Mercier, on the 15th June, waited on Mr. Seward and proposed to read to him despatches which they had received from their respective Governments. Mr. Seward, as we have already seen,[1] refused to receive any communication which assumed that the revolted States were to be regarded as belligerents by foreign Powers, but said that, as to what the two Governments practically asked, "he was ready to agree to all, and more than all that was desired. The United States had always held, and held still, that the flag covered the cargo, and that the property of a friend was not liable to seizure under an enemy's flag. The Government admitted fully that it would be responsible for the acts of any privateer to whom it should issue letters of marque. He regarded these principles to be quite as applicable to measures of coercion adopted against rebels as to the operations of a regular war."[2]

[1] Page 159.

[2] *Lord Lyons to Lord J. Russell*, 17th June, 1861.

The report of this conversation does not prepare us to find that the Government of the United States was at the time when it occurred, and had for some time been, not merely willing to adopt the Paris Declaration but very desirous to conclude express Conventions on the subject with both France and Great Britain. Instructions to negotiate such Conventions had in fact been sent to Mr. Adams and Mr. Dayton as early as the 25th April. The three Governments and their respective Ministers appear to have been at cross purposes as to the place where the negotiation was to be carried on, and questions of form arose which had the effect of protracting it; but Conventions, substantially identical, were finally submitted in draft to Lord Russell and M. Thouvenel, and by them accepted on behalf of their respective Governments. Here, however, a difficulty arose, which could not well have been unforeseen.

"You will clearly understand," Lord Russell had, at the outset, written to Lord Lyons, "that Her Majesty's Government cannot accept the renunciation of privateering on the part of the Government of the United States if coupled with the condition that they should enforce its renunciation on the Confederate States, either by denying their right to issue letters of marque, or by interfering with the belligerent operations of vessels holding from them such letters of marque, as long as they carry on hostilities on the recognized principles, and under the admitted liabilities, of the law of nations."[1]

"I think," Mr. Dayton had told Mr. Seward, "that the force and efficacy of an accession by our Government to the Treaty of Paris is misunderstood. If I understand the views of these foreign Governments, such accession by us would merely bind our hands as respects privateering; it would not at all enlarge our

[1] *Lord J. Russell to Lord Lyons*, 18th May, 1861.

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rights as against a belligerent Power not a party to the Treaty, nor would it bind these European Governments to enforce the laws of piracy as against such belligerent Power not a party to the Treaty. If they admit the Confederate States as a belligerent Power, and recognize them for even commercial purposes (which, I take it, is what they meant to do) our accession to the Treaty of Paris will not change their action in this respect. The status of these rebellious States as respects privateering will remain where it was. At least that is the view which I think will be taken of this matter in England and France." "It is doubtful, perhaps," he wrote again, "whether the other Powers will, under the circumstances, negotiate for the accession of the United States to the Treaty in question; but, should they do so, it will be with the understanding that it imposes no new duties on them, growing out of our domestic controversy."[1]

No one, indeed, can read Mr. Dayton's despatches without perceiving that, though he obeyed his instructions by negotiating the Convention, he obeyed them with reluctance. If the Convention was proposed with a view—I will not say to entrap the Governments and Great Britain and France, but to obtain a temporary advantage which they did not mean to concede, he saw clearly that this expectation was futile. If not, he thought the time chosen for acceding to the Declaration inopportune. And he was convinced, and rightly convinced, that the engagement for which he was treating would receive one interpretation in America and another in Europe. The assumption on one side was, that France and England would be bound to regard the Confederates as subjects of a Power which had renounced privateering. The assumption on the other was, that, for the purposes of the war, and so long as it might

[1] *Mr. Dayton to Mr. Seward*, 7th and 12th June, 1861.

last, the Confederates must be regarded as a community virtually independent, not bound by Treaties made by the Government of the United States, and at liberty to resort to privateering.

On the 22nd June Mr. Seward wrote to Mr. Dayton:—

"We wish to act singly and in good faith with the French Government. We understand, and shall continue to understand, that France does not concede belligerent rights to the insurgents in contravention of our sovereignty. We shall insist that she does nothing adverse to our position, whatever may be said to the contrary.

"She has proposed to tell us that she thinks the Confederate States are entitled to belligerent rights. We have declined to hear that. We have not heard it. We shall continue to regard France as respecting our Government, throughout the whole country, until she practically acts in violation of her friendly obligations to us, as we understand them. When she does that, it will be time enough to inquire whether, if we accede to the Treaty of Paris, she could, after that, allow pirates upon our commerce shelter in her ports; and what our remedy then should be. We have no fear on this head."

On the 6th July he had a conversation with Lord Lyons, of which we have the following account:—

"He went on to tell me that he was endeavouring to disentangle a complication which had been produced by Mr. Dayton at Paris. Mr. Dayton had, he said, been instructed to state to the French Government that the Government of the United States preferred the proposal of Mr. Marcy, by which private property would be altogether exempted from capture; but that, nevertheless, they were willing, if necessary, to accede at once to the Declaration of Paris 'pure and simple,' and to postpone the discussion of Mr. Marcy's proposal to a more propitious moment. Mr. Dayton, however, when he saw that France had accorded belligerent rights to the rebels, became alarmed, and conceived that an acceptance of the Declaration of Paris would be injurious to the United States, inasmuch as it would preclude them from employing privateers without imposing a similar restriction on the insurgents. He had, therefore, departed from his instructions, and made, on his own responsibility, proposals intended to avert this danger. Now (Mr. Seward went on to say) if, on the one hand, the Government of the United States declared that they held their accession to the Paris Declaration to impose an obligation on France with regard to all the States in the Union—the disloyal as well as the loyal; or, if on the other hand, the Government of France announced that it did not intend, by accepting the accession of the United States, to contract any engagement affecting the States in revolt,

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then Mr. Dayton's apprehensions might be well founded: but if nothing was said on either side concerning this particular point, the accession of the United States might be given at once, and accepted, and the effect of it with regard to the States in revolt be determined afterwards."

On the same day he sent a long explanation to Mr. Dayton. After referring to the "complication" produced by "the irregular and extraordinary proceedings of the French Government in proposing to take notice of the domestic disturbance which has occurred in this country," he proceeds:—

"The reason why we wished it done immediately was, that we supposed the French Government would naturally feel a deep anxiety about the safety of their commerce, threatened distinctly with privateering by the insurgents, while at the same time, as this Government had heretofore persistently declined to relinquish the right of issuing letters of marque, it would be apprehended by France that we should take up that form of maritime warfare in the present domestic controversy. We apprehended that the danger of such a case of depredation upon commerce equally by the Government itself, and by its enemies, would operate as a provocation to France and other commercial nations to recognize the insurrectionary party in violation of our national rights and sovereignty. On the contrary, we did not desire to depredate on friendly commerce ourselves, and we thought it our duty to prevent such depredations by the insurgents by executing our own laws, which make privateering by disloyal citizens piracy, and punish its pursuit as such. We thought it wise, just, and prudent to give, unasked, guarantees to France and other friendly nations for the security of their commerce from exposure to such depredations on either side, at the very moment when we were delivering to them our protest against the recognition of the insurgents. The accession to the Declaration of Paris would be the form in which these guarantees could be given—that for obvious reasons must be more unobjectionable to France and to other commercial nations than any other. It was safe on our part, because we tendered it, of course, as the act of this Federal Government, to be obligatory equally upon disloyal as upon loyal citizens.

* * * * *[1]

"The matter stood in this plain and intelligible way until certain declarations or expressions of the French Government induced you to

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[1] The passage omitted refers to Mr. Dayton's fruitless attempt to re-introduce the "Marcy Amendment" into the Convention.

believe that they would recognize and treat the insurgents as a distinct national power for belligerent purposes. It was not altogether unreasonable that you, being at Paris, should suppose that this Government would think itself obliged to acquiesce in such a course by the Government of France. So assuming, you thought that we would not adhere to our proposition to accede to the declaration, pure and simple, since such a course would, as you thought, be effective to bind this Government without binding the insurgents, and would leave France at liberty to hold us bound, and the insurgents free from the obligations created by our adhesion. Moreover, if we correctly understand your despatch on that subject, you supposed that you might propose our adhesion to the Treaty of Paris, not pure and simple, but with the addition of the Marcy proposition in the first instance, and might afterwards, in case of its being declined in that form, withdraw the addition, and then propose our accession to the Declaration of Paris, pure and simple.

"While you were acting on these views on your side of the Atlantic, we on this side, not less confident in our strength than in our rights, as you are now aware, were acting on another view, which is altogether different, namely, that we shall not acquiesce in any declaration of the Government of France that assumes that this Government is not now, as it always has been, exclusive Sovereign, for war as well as for peace, within the States and territories of the Federal Union, and over all citizens, the disloyal and loyal all alike. We treat in that character, which is our legal character, or we do not treat at all, and we do in no way consent to compromise that character in the least degree; we do not even suffer this character to become the subject of discussion. Good faith and honour, as well as the same expediency which prompted the proffer of our accession to the Declaration of Paris, pure and simple, in the first instance, now require us to adhere to that proposition and abide by it; and we do adhere to it, not however, as a divided, but as an undivided nation. The proposition is tendered to France not as a neutral but as a friend, and the agreement is to be obligatory upon the United States and France and all their legal dependencies just alike.

"The case was peculiar, and in the aspect in which it presented itself to you portentous. We were content that you might risk the experiment, so, however, that you should not bring any responsibility for delay upon this Government. But you now see that by incorporating the Marcy Amendment in your proposition, you have encountered the very difficulty which was at first foreseen by us. The following nations are parties to the Declaration of Paris, namely, Baden, Bavaria, Belgium, Bremen, Brazils, Duchy of Brunswick, Chili, the Argentine Confederation, the Germanic Confederation, Denmark, the two Sicilies, the Republic of the Equator, the Roman States, Greece, Guatemala, Hayti, Hamburg, Hanover, the two Hesses, Lubeck, Mecklenburg Strelitz, Mecklenburg Schwerin, Nassau, Oldenburg, Parma, Holland, Peru, Portugal, Saxony, Saxe Altenburg, Saxe-Coburg Gotha, Saxe Meiningen,

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Saxe Weimar, Sweden, Switzerland, Tuscany, Wurtemburg, Anhalt Dessau, Modena, New Granada, and Uruguay.

"The great exigency in our affairs will have passed away—for preservation or destruction of the American Union—before we could bring all these nations to unanimity on the subject, as you have submitted to M. Thouvenel. It is no time for propagandism, but for energetic action to arrest the worst of all national calamities. We therefore expect you now to renew the proposition in the form originally prescribed. But in doing this you will neither unnecessarily raise a question about the character in which this Government acts (being exclusive Sovereign), nor, on the other hand, in any way compromise that character in any degree. Whenever such a question occurs to hinder you, let it come up from the other party in the negotiation. It will be time then to stop and wait for such further instructions as the new exigency may require."

Mr. Dayton's view of the transaction in which he was engaged appears, after this copious explanation, to have been exactly the same as before. On the 5th of August we find him writing to Mr. Adams:—

"You say you do not comprehend the drift of the last paragraph in Lord John's reply. I think I do, at least in part, and I shall not be surprised if the meaning, which he has purposely wrapped up in that general language, should in the end break off all negotiation. He may not refer to this language again, but unless you ask its meaning before the Treaty is negotiated, it will be used by them afterwards as an excuse for not carrying it into effect as respects the insurrectionists of the South. The paragraph states, 'the engagement of Great Britain will be prospective, and will not invalidate anything already done.' The comment after the Treaty, predicated upon this language, will be: 'We had declared before the Treaty that the Southern insurrectionists were a belligerent party, aud entitled to belligerent rights (among which is the right to issue letters of marque), and the Treaty was to be prospective only, and not to invalidate anything already done. That, in other words, it does not bind your disloyal citizens, recognized by us as a belligerent party.' I long ago wrote Mr. Seward that these Powers would, in my judgment, either refuse to negotiate, or, if they did negotiate, it would be with the understanding that it secured us no rights not already conceded, and charged them with no duties not heretofore acknowledged. It is advisable that we raise no question in advance in reference to this matter, but it is necessary that we know what they mean as we go along."

It is clear that the two European Powers, had they simply acceded to the Convention, as they were asked

to do, would have been pinned to an engagement which the American Government was prepared to construe in a sense very different from that wherein they naturally regarded it; and that this discrepancy was perfectly understood by the American negotiators, by whom the Convention was drawn, and by whom it was proposed. Understanding this, the envoys were instructed not to raise the question themselves, but to let it, if raised at all, come from the other side; and they appear to have obeyed their instructions. The French and English Governments, however, would have been gifted with little penetration had they not perceived the danger to which they were asked to expose themselves. They saw plainly that they had to choose between two courses—either to refuse to sign the Convention, or to declare plainly at the time of signing in what sense they apprehended it. They chose the latter alternative. "My anticipations," wrote Mr. Dayton, on the 22nd August, "are fully realized. Both Lord John Russell and M. Thouvenel refuse to negotiate for an accession by the United States to the Treaty of Paris of 1856, except on the distinct understanding that it is to have no bearing directly or indirectly on the question of our Southern or domestic difficulty; and to render the matter certain, they each propose to make a written Declaration, simultaneous with the execution of the Convention, of which I herewith send you a copy and translation."

The proposed Declarations were as follows:—

British Declaration.

"In affixing his signature to the Convention of this day, between Her Majesty the Queen of Great Britain and Ireland and the United States of America, the Earl Russell declares, by order of Her Majesty, that Her Majesty does not intend thereby to undertake any engagement which shall have any bearing direct or indirect on the internal differences now prevailing in the United States."

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French Declaration.

(Translation.)

"In affixing his signature to the Convention concluded this day between France and the United States, the Undersigned declares, in execution of the orders of the Emperor, that the Government of His Majesty does not intend to undertake by the said Convention any engagement of a nature to implicate it directly or indirectly in the internal conflict now existing in the United States."

The Government of the United States refused to accept these Declarations, and the whole negotiation fell to the ground, and was never renewed.[1] Lord Russell, however, on the 20th December, wrote to Lord Lyons: "You may speak to Mr. Seward about letters of marque. Should Great Britain and the

[1] The despatches in which each Government explained and vindicated its own course are:—

United States to Great Britain—*Mr. Adams to Earl Russell*, 23rd August, 1861.

United States to France—*Mr. Dayton to M. Thouvenel*, 26th August, 1861; *Mr. Seward to Mr. Dayton*, 10th September, 1861.

Great Britain to United States—*Earl Russell to Mr. Adams*, 28th August, 1861.

France to United States—*M. Thouvenel to Mr. Dayton*, 9th September, 1861.

"The acceptance of such an explanation from one party," wrote Mr. Adams to Lord Russell, on the 23rd August, "would justify the idea that some advantage is, or may be suspected to be, intended to be taken by the other. The natural effect of such an accompaniment would seem to be to imply that the Government of the United States might be desirous at this time to take a part in the Declaration [of 1856], not from any high purpose or durable policy, but with the view of securing some small temporary object in the unhappy struggle which is going on at home. Such an inference would spoil all the value that might be attached to the act itself. The mere toleration of it would seem to be equivalent to a confession of their own weakness. Rather than that such a record should be made, it were a thousand times better that the Declaration remain unsigned for ever."

Mr. Dayton wrote to M. Thouvenel in a like strain, yet with an evident sense of relief at the turn which affairs had taken. It might have been supposed that the refusal of the explanation, rather than the acceptance of it, was calculated to suggest the inference which Mr. Adams repudiated so indignantly.

United States ever unhappily be at war with one another, Her Majesty will be ready to relinquish her prerogative and abolish privateering as between the two nations, provided the President would be ready to make a similar engagement on the part of the United States."[1]

I refrain from any comment on this negotiation. No Southern privateer, I believe, ever entered any port of Great Britain or France, or of their respective dependencies. The Congress of the United States passed, on the 3rd March, 1863, an Act authorizing the President, in any foreign or domestic war, to issue letters of marque, and make rules for the conduct of privateers and disposal of their prizes. But this Act, the operation of which was limited to three years, appears never to have been put in force.

The history of an unofficial application made to the Confederate States on the same subject is told in the two following despatches. It will be seen that the channel of communication was a private person, instructed by the British and French Consuls at Charleston, who had been themselves instructed by the Ministers of their respective Governments at Washington :—

Lord Lyons to Consul Bunch.

" Sir, " *Washington, July* 5, 1861.

" The course of events having invested the States assuming the title of the Confederate States of America with the character of belligerents, it has become necessary for Her Majesty's Government to obtain from the existing Government in those States securities concerning the proper treatment of neutrals.

" I am authorized by Lord John Russell to confide the negotiation on this matter to you; and I have great satisfaction in doing so. In order to make you acquainted with the views of Her Majesty's Government, I transmit to you a duplicate of a despatch to me in which they are fully stated.

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[1] *Earl Russell to Lord Lyons*, 20th December, 1861.

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"It is essential, under present circumstances, that you should act with great caution, in order to avoid raising the question of the recognition of the new Confederation by Great Britain. On this account, I think it unadvisable that you should go to Richmond, or place yourself in direct communication with the Central Authority which is established there.

"The most convenient course will, probably, be for you to take advantage of the intercourse which you naturally hold with Mr. Pickens, the Governor of the State of South Carolina. I cannot doubt that if you explain, verbally, to Mr. Pickens the views of Her Majesty's Government, he will have no difficulty in inducing the Government at Richmond to recognize, by an official act, the rights secured to neutrals by the second and third Articles of the Declaration of Paris, and to admit its own responsibility for the acts of privateers sailing under its letters of marque.

"The most perfect accord on this question exists between Her Majesty's Government and the Government of the Emperor of the French; and instructions corresponding to these are sent to-day by the Emperor's Minister here to the French Consul at Charleston. You will accordingly enter into the frankest communication with your French colleague on the subject, and will be careful to act in strict concert with him.

"I am, &c.

(Signed) "LYONS."

Consul Bunch to Lord Lyons.

(Extract.) "*Charleston, August* 16, 1861.

"I have the honour to acknowledge the receipt, on the 19th ultimo, of your Lordship's despatch of the 5th July, together with its inclosure, viz., a despatch from Lord John Russell of the 17th May last, on the subject of the proposed adhesion of the Confederate States of America to the four Articles of the Declaration of Paris, and of the rights of neutrals in the contest now raging in this country. I proceed to reply to your Lordship's communication.

"In so doing, I begin by requesting your Lordship to convey to Lord John Russell the expression of my sincere gratitude for the honour which he has been pleased to confer upon me by selecting me as the organ of Her Majesty's Government in the negotiation to which your Lordship's despatch and its inclosure have reference. I beg leave also to offer to your Lordship my grateful acknowledgments for the kind manner in which you have placed the matter in my hands.

"Immediately upon receipt of your Lordship's despatch, I proceeded to put myself into communication with my French colleague, M. de Beligny, who, as I found, had received instructions from M. Mercier of a character precisely similar to those with which I was honoured. After the fullest and frankest interchange of our respective views, we deter-

mined upon the line of action which I am now about to report to your Lordship.

" Our attention was first directed to the suggestion contained in your Lordship's despatch that, as it would be inexpedient for us to go to Richmond, our negotiation might, probably, be advantageously conducted through Mr. Pickens, the Governor of South Carolina, with whom you naturally supposed that we were in frequent communication. But, notwithstanding our earnest desire to meet in every way the wishes of our chiefs, we were forced to the conclusion that it would be inexpedient to approach him, for several reasons, amongst which it may suffice to mention his absence from Charleston. He has been for some weeks past on his plantation in the interior of the State.

" But we were so far fortunate as to secure the valuable services of an agent in the person of Mr. ——, who is well known to your Lordship, and whose position seemed admirably to adapt him for the duties which he was so obliging as to undertake.

" Mr. —— left for Richmond on the 20th July. Arriving on the 22nd, he found that the President was with the army, whither Mr. —— followed him ; but meeting him half-way between Richmond and Manassas, returned with him to the capital on the 23rd. On the next day Mr. —— had an interview with his Excellency, and communicated to him the mission with which he was charged. Mr. Davis expressed no unwillingness to entertain the matter, although he signified his regret that it should not have been more formally brought before him, as it seemed to him that if the Declaration which it was sought to obtain from the Government of the Confederate States was of sufficient importance to require the overture now made to him, it was of equal consequence that it should be made in a more regular manner.

" His Excellency, as we understand, at once summoned a meeting of the Cabinet, and the matter was placed in the hands of the Secretary of State, Mr. Hunter, who has been appointed in the place of Mr. Toombs. It was soon determined that Congress should be invited to issue a series of Resolutions, by which the second, third, and fourth Articles of the Declaration of the Treaty of Paris should be accepted by the Confederate States. These Resolutions were passed on the 13th instant, approved on the same day by the President, and I have the honour to inclose herewith to your Lordship the copy of them which has been sent to Mr. —— by the Secretary of State, to be delivered to M. de Belligny and myself.

" Your Lordship will observe that, by these Resolutions, the Confederate States accept the second, third, and fourth Articles of the Declaration of Paris, but by their Resolution declare, with reference to the first Article, that they ' maintain the right of privateering as it has been long established by the practice and recognized by the Law of Nations.' With respect to this Resolution, I beg to remark that the wishes of Her Majesty's Government would seem to have been fully met, for as no proposal was made that the Confederate Government should abolish privateering, it could not be expected that they would do so of

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their own accord, particularly as it is the arm upon which they most rely for the injury of the extended commerce of their enemy. But the Secretary of State has placed in the hands of Mr. ——, for communication to us, the inclosed copy of the instructions issued for the guidance of privateers, and appeals to them, as well as to the character of the Government, for a proof of their determination that the privateers shall conform themselves to the ordinary practices sanctioned by the Law of Nations. We think that we may rely on the assurances thus given, supported, as they are, by the language of the Resolution.

"The fact is, that the President and the Government are a good deal annoyed at the refusal of France, England, and other nations to allow prizes to be condemned in their ports, which they consider as somewhat of a departure from a strict neutrality, and which they still hope may be reconsidered as the contest advances. They also confidently expect that the same anxiety for the mitigation of the evil consequences of the present war, which has rendered the accession of the Confederate States to the Declaration of Paris a matter of interest to France and England, will induce other nations to insist upon the rigorous fulfilment by the United States of the principle contained in the fourth Article, viz., the effectiveness of the blockade instituted by that Power.

"The negotiation having thus been brought to a close, the President expressed to Mr. —— his hope that the existence of those extended relations of commercial intercourse which had rendered the application now made to him by the Governments of France and England a necessity in the view of those nations, would materially contribute to hasten a formal recognition of the new Confederacy, which was disposed, on its part, to show its full appreciation of a cordial and friendly understanding between itself and the other nations of the earth, with which it was prepared to enter into association on terms of equality.

"It only remains for me to express my hope that the manner in which this negotiation has been conducted may meet with the approval of your Lordship and of Her Majesty's Government. In common with my French colleague, I am fully sensible of the obligations under which we are to Mr. ——, who has carried out what we conceived to be the views of our respective Governments."

(Inclosure.)

"*Resolution touching certain Points of Maritime Law, and defining the position of the Confederate States in respect thereto.*

"Whereas the Plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, in a Conference held at Paris on the 16th of April, 1856, made certain declarations concerning maritime law, to serve as uniform rules for their guidance in all cases arising out of the principles thus proclaimed;

"And whereas, it being desirable not only to attain certainty and

uniformity, as far as may be practicable, in maritime law, but also to maintain whatever is just and proper in the established usages of nations, the Confederate States of America deem it important to declare the principles by which they will be governed in their intercourse with the rest of mankind: Now, therefore, be it

"Resolved by the Congress of the Confederate States of America:—

"1st. That we maintain the right of privateering, as it has been long established by the practice, and recognized by the Law, of Nations.

"2nd. That the neutral flag covers enemy's goods, with the exception of contraband of war.

"3rd. That neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag.

"4th. That blockades, in order to be binding, must be effectual; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

"Signed by the President of Congress, on the 13th August, and approved same day by the President of the Confederate States of America."

This transaction gave so much offence to the Government of the United States as to lead to the revocation of Mr. Bunch's *exequatur*. Several charges were made against him; but they were ultimately reduced to the allegation that he had knowingly violated a law, made during the troubled period of the French Revolution, which "forbids any person, not specially appointed, or duly authorized or recognized, by the President, from counselling, advising, aiding, or assisting in any political correspondence with the Government of any foreign State, with an intent to influence the measures of any foreign Government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of their Government."[1] The foreign Government which Mr. Bunch was accused of "advising or assisting in relation to disputes or controversies with the United States, or to defeat the measures of their Government," was that of Great Britain. Lord Russell pointed out that Mr. Bunch had, in reality,

[1] *Mr. Adams to Earl Russell*, 21st November, 1861.

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done nothing of the kind, and had offended neither against the letter nor against the spirit of the law; but he did not dispute the President's right to withdraw the *exequatur*, whether on sufficient or on insufficient grounds. Mr. Bunch continued to reside at Charleston.

CHAPTER IX.

Case of the *Trent*.—Seizure of the Confederate Commissioners by the Captain of the *San Jacinto*.—Instructions to Lord Lyons.—Expressions of Opinion by several European Powers.—Release of the Commissioners.—Observations.

THE controversies, such as they are, to which this war gave rise, turn for the most part on the application of familiar principles as to which British and American jurists had previously no difference of opinion. But an incident occurred in November 1861 which was to some extent new, became the subject of lively discussion, elicited expressions of opinion from several European Powers, and is not without value as a precedent. It created at the time some excitement in England; and left behind, I fear, some lingering sensations of annoyance and resentment in America.

The three persons whom the Confederate Government had appointed in March to proceed as its agents to Europe, had failed both in London and in Paris to obtain any official recognition for their Government or themselves. Lord Russell had received them on the footing of private gentlemen and listened to what they had to say, but had avoided correspondence, and remained immovable in his refusal to enter into any official communication. At the French Court they had been equally unsuccessful. Disappointed, but not disconcerted, at this failure, Mr. Davis determined to try the effect of a second and more formal mission. Mr. James Mason, a Virginian of historic name and great personal mark, who had been Chairman of the

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Committee of the Senate on Foreign Affairs and American Minister in Paris, and Mr. John Slidell, of Louisiana, who had represented the United States in Mexico, were chosen for this employment, and furnished with credentials respectively for the Courts of Great Britain and France. They sailed from Charleston on the night of the 12th October in the Confederate steamer *Theodora*, unimpeded by the blockading ships; landed at Cardenas in Cuba, travelled to Havana, and there took their places as passengers on board the *Trent*, a British packet plying regularly between Vera Cruz and the Danish island of St. Thomas. The packets on this line carried the English mails under contract with the Government, and were in connection at St. Thomas with the steamers running from that island to Southampton. The *Trent* had on board more than sixty passengers, a large quantity of specie, and a valuable cargo. Whilst the Commissioners were at Havana, it had been visited by the United States' war-steamer *San Jacinto*, which had been cruising for six weeks in quest of the *Sumter*. Captain Wilkes, the officer in command, having satisfied himself of the identity of the Commissioners and ascertained their intended movements, coaled and put to sea immediately, with the design of intercepting the *Trent* on her passage. What afterwards occurred is told in the report addressed by Commander Williams, R.N., the Admiralty Agent in charge of the mails on board the *Trent*, to his superior officer at Southampton :—

"Sir, "'*Trent*,' *at Sea*, *November* 9, 1861.

"There devolves on me the painful duty of reporting to you a wanton act of aggression on this ship by the United States' war screw-steamer *San Jacinto*, carrying a broadside of seven guns, and a shell pivot-gun of heavy calibre on the forecastle, which took place on the 8th instant, in the Bahama Channel, abreast of the Paredon lighthouse.

"The *Trent* left Havana at 8 A.M. on the 7th instant, with Her Majesty's mails for England, having on board a large freight of spec-

as well as numerous passengers, amongst whom were Messrs. Mason and Slidell, the former accredited with a special mission from the Confederate States to the Government of Great Britain, and the latter to the French Government, with their respective Secretaries, Messrs. McFarland and Eustis.

"Shortly after noon on the 8th, a steamer having the appearance of a man-of-war, but not showing colours, was observed ahead, hove-to; we immediately hoisted our ensign at the peak, but it was not responded to until, on nearing her at 1·15 P.M., she fired a round shot from her pivot-gun across our bows, and showed American colours. Our engines were immediately slowed, and we were still approaching her when she discharged a shell from her pivot-gun immediately across our bows, exploding half a cable's length ahead of us. We then stopped, when an officer with an armed guard of marines boarded us, and demanded a list of passengers, which demand being refused, the officer said that he had orders to arrest Messrs. Mason, Slidell, McFarland, and Eustis, and that he had sure information of their being passengers in the *Trent*. Declining to satisfy him whether such persons were on board or not, Mr. Slidell stepped forward, and announced that the four persons he had named were then standing before him under British protection, and that if they were taken on board the *San Jacinto*, they must be taken *vi et armis;* the Commander of the *Trent* and myself at the same time protesting against this illegal act, this act of piracy, carried out by brute force, as we had no means of resisting the aggression, the *San Jacinto* being at the time on our port beam, about 200 yards off, her ship's company at quarters, ports open, and tompions out.

"Sufficient time being given for such necessaries as they might require being sent to them, these gentlemen were forcibly taken out of the ship, and then a further demand was made that the commander of the *Trent* should proceed on board the *San Jacinto;* but, as he expressed his determination not to go unless forcibly compelled likewise, this latter demand was not carried into execution.

"At 3·40 we parted company, and proceeded on our way to St. Thomas, on our arrival at which place I shall deliver to the Consul duplicates of this letter to Lord Lyons, Sir Alexander Milne, Commodore Dunlop, and the Consul-General at Havana.

"I have, &c.

(Signed) "Richard Williams, Commander, R.N.,
"and Admiralty Agent in Charge of Mails."

To this report Commander Williams subsequently added the following memorandum :—

"On Mr. Slidell's announcing that the four persons inquired for were then standing before Lieutenant Fairfax under British protection, and that if taken on board the *San Jacinto* they must be taken *vi et*

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armis, I addressed that officer in the following terms :—'In this ship I am the representative of Her Britannic Majesty's Government, and in the name of that Government, I protest against this illegal act—this violation of international law—this act of piracy, which you would not dare to attempt on a ship capable of resisting such aggression.'

"It was then that Lieutenant Fairfax waved his hand towards the *San Jacinto*, and additional force was sent. The marines were drawn up at the entry-port, bayonets fixed; and on Miss Slidell's uttering an hysterical scream on her being separated from her father—that is, on his breaking the window of his cabin and thrusting his body through to escape from the distressing scene of forcible separation from his family—they rushed into the passage at the charge. There were upwards of sixty armed men in all, and the aforesaid gentlemen were then taken out of the ship, an armed guard on either side of each seizing them by the collar of the coat. Every inducement was held out, so far as importunate persuasion would go, to prevail on Mrs. Slidell and Mrs. Eustis, with the son and three daughters of the former, to accompany their husbands; but as they did not wish their wives to be subjected to imprisonment (Lieutenant Fairfax having replied to Mrs. Slidell's inquiry as to their disposal if they did accompany them, that they would be sent to Washington), they remained on board the *Trent*, and came on to England in *La Plata*.

"The ships getting somewhat further apart than when this affair commenced, a boat came from the *San Jacinto* to request us to approach nearer; to which I replied that they had the same power as ourselves, and if they wished to be nearer to us, they had their own remedy."

These statements were corroborated as to the material facts by a written protest signed by the master of the *Trent* on her arrival at St. Thomas.

Captain Wilkes's report of the transaction to the Secretary of the Navy, after stating that he had been in expectation of receiving a telegraphic despatch from the American Consul-General at Havana giving the time of the *Trent's* departure, proceeds :—

"In this also I was disappointed, and ran to the eastward some 90 miles, where the old Bahama Channel contracts to the width of 15 miles, some 240 miles from the Havana, and in sight of the Paredon del Grande lighthouse. There we cruised until the morning of the 8th, awaiting the steamer, believing that, if she left at the usual time, she must pass us about noon of the 8th, and we could not possibly miss her. At 11·40 A.M. on the 8th her smoke was first seen; at 12 M. our position was to the westward of the entrance into the narrowest part of the

channel, and about 9 miles north-east from the lighthouse of Paredon del Grande, the nearest point of Cuba to us. We were all prepared for her, beat to quarters, and orders were given to Lieutenant D. M. Fairfax to have two boats manned and armed to board her, and make Messrs. Slidell, Mason, Eustis, and McFarland prisoners, and send them immediately on board. The steamer approached and hoisted English colours, our ensign was hoisted, and a shot was fired across her bow; she maintained her speed and showed no disposition to heave-to; then a shell was fired across her bow, which brought her to. I hailed that I intended to send a boat on board, and Lieutenant Fairfax, with the second cutter of this ship, was despatched. He met with some difficulty, and remaining on board the steamer with a part of the boat's crew, sent her back to request more assistance; the captain of the steamer having declined to show his papers and passenger list, a force became necessary to search her; Lieutenant James A. Greer was at once despatched in the third cutter, also manned and armed.

"Messrs. Slidell, Mason, Eustis, and McFarland were recognized, and told they were required to go on board this ship. This they objected to, until an overpowering force compelled them; much persuasion was used, and a little force, and at about 2 o'clock they were brought on board this ship, and received by me. Two other boats were then sent to expedite the removal of their baggage and some stores, when the steamer, which proved to be the *Trent*, was suffered to proceed on her route to the eastward, and at 3·30 P.M. we bore away to the northward and westward. The whole time employed was two hours and thirteen minutes.

"I inclose you the statements of such officers who boarded the *Trent*, relative to the facts, and also an extract from the log-book of this ship.

"It was my determination to have taken possession of the *Trent*, and sent her to Key West as a prize, for resisting the search, and carrying these passengers, whose character and objects were well known to the captain; but the reduced number of my officers and crew, and the large number of passengers on board, bound to Europe, who would be put to great inconvenience, decided me to allow them to proceed.

"Finding the families of Messrs. Slidell and Eustis on board, I tendered them the offer of my cabin for their accommodation to accompany their husbands; this they declined, however, and proceeded in the *Trent*."[1]

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[1] Moore's *Record of the Rebellion*, vol. iii, p. 322 (*Documents*). There appears to have been no resistance to search, except that the master of the *Trent* refused to produce his list of passengers, in which he was wrong.

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No fault is to be found with the manner in which Lieutenant Fairfax executed his orders. He did his duty with propriety and forbearance, in the face of some provocation from the passengers and officers of the *Trent*, who were excited and angry. Nor had the captives anything to complain of on board the *San Jacinto*, where, as they acknowledged to Captain Wilkes, on going ashore, they were treated "with great courtesy and attention." They were taken to Boston harbour, and there imprisoned in Fort Warren.

The decision formed by the British Government on receiving this grave intelligence was conveyed by Lord Russell to Lord Lyons in a despatch dated 30th November. After reciting the circumstances, the despatch proceeded as follows:—

"It thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral Power, while such vessel was pursuing a lawful and innocent voyage, an act of violence which was an affront to the British flag and a violation of international law.

"Her Majesty's Government, bearing in mind the friendly relations which have long subsisted between Great Britain and the United States, are willing to believe that the United States' naval officer who committed this aggression was not acting in compliance with any authority from his Government, or that, if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received.

"For the Government of the United States must be fully aware that the British Government could not allow such an affront to the national honour to pass without full reparation, and Her Majesty's Government are unwilling to believe that it could be the deliberate intention of the Government of the United States unnecessarily to force into discussion between the two Governments a question of so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

"Her Majesty's Government therefore trusts that when this matter shall have been brought under the consideration of the Government of the United States, that Government will, of its own accord, offer to the British Government such redress as alone would satisfy the British nation, namely, the liberation of the four gentlemen, and their delivery to your Lordship in order that they may again be placed under British

protection, and a suitable apology for the aggression which has been committed.

"Should these terms not be offered by Mr. Seward, you will propose them to him.

"You are at liberty to read this despatch to the Secretary of State, and if he shall desire it, you will give him a copy of it."[1]

A second despatch of the same date contained the following additional instructions:—

"In my previous despatch of this date I have instructed you, by command of Her Majesty, to make certain demands of the Government of the United States.

"Should Mr. Seward ask for delay in order that this grave and painful matter should be deliberately considered, you will consent to a delay not exceeding seven days. If, at the end of that time, no answer is given, or if any other answer is given except that of a compliance with the demands of Her Majesty's Government, your Lordship is instructed to leave Washington with all the members of your Legation, bringing with you the archives of the Legation, and to repair immediately to London.

"If, however, you should be of opinion that the requirements of Her Majesty's Government are substantially complied with, you may report the facts to Her Majesty's Government for their consideration, and remain at your post till you receive further orders.

"You will communicate with Vice-Admiral Sir A. Milne immediately upon receiving the answer of the American Government, and you will send him a copy of that answer, together with such observations as you may think fit to make.

"You will also give all the information in your power to the Governors of Canada, Nova Scotia, New Brunswick, Jamaica, Bermuda, and such other of Her Majesty's Possessions as may be within your reach.

Anxious, as it appears, to mitigate the effect of this peremptory demand, made still more peremptory by the difficulties which then surrounded the American Government, Lord Russell added in a private letter:—

"The despatches which were agreed to at the Cabinet yesterday, and which I have signed this morning, impose upon you a disagreeable task. My wish would be that at your first interview with Mr. Seward you should not take my despatch with you, but should prepare him

[1] *Earl Russell to Lord Lyons*, 30th November, 1861.

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for it, and ask him to settle with the President and the Cabinet what course they would propose.

"The next time you should bring my despatch and read it to him fully.

"If he asks what will be the consequence of his refusing compliance, I think you should say that you wish to leave him and the President quite free to take their own course, and that you desire to abstain from anything like menace."

In the meanwhile, Captain Wilkes's exploit had been received with general but not unanimous applause. From his official superior, the Secretary of the Navy, he received warm congratulations. "Your conduct in seizing these public enemies has the emphatic approval of this Department." "The forbearance shown," added Mr. Welles, "in omitting to capture the *Trent* herself, must not be permitted to constitute a precedent hereafter for infractions of neutral obligations."[1] The House of Representatives, which met on the 2nd December, passed a resolution tendering to him the thanks of Congress; and this was coupled with another, likewise passed unanimously, by which the President was requested to confine Mr. Mason and Mr. Slidell in felons' cells, and treat them as persons convicted of infamous crimes. But there were those who thought differently. Doubts whether the act was warranted by public law, or consistent with principles which America had always cherished with peculiar jealousy, were freely expressed. These doubts appear to have been shared by Mr. Seward himself. Very early in December, he wrote to Mr. Adams a despatch, which the latter was authorized to read to Lord Russell, stating that Captain Wilkes's act had been done without instructions from his Government, that no decision had been formed upon the subject, and that none would be formed without waiting for any representations which might be made by Great Britain.

[1] *Mr. Welles to Captain Wilkes*, 30th November, 1861.

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It was the good fortune of the British Government and people to be represented at Washington, during the whole of the war, by a Minister who, to a thorough acquaintance with his duties, added prudence, caution, a most conciliatory temper, and an upright and truthful character.[1] Lord Lyons saw at once how critical was the occasion. "I have deemed it right," he wrote to Lord Russell on the 19th November, "to maintain the most complete reserve on the subject."

"To conceal the distress which I feel would be impossible, nor would it, if possible, be desirable; but I have expressed no opinion on the questions of international law involved; I have hazarded no conjecture as to the course which will be taken by Her Majesty's Government. On the one hand, I dare not run the risk of compromising the honour and inviolability of the British flag by asking for a measure of reparation which may prove to be inadequate; on the other hand, I am scarcely less unwilling to incur the danger of rendering a satisfactory settlement of the question more difficult by making a demand which may turn out to be unnecessarily great. In the present imperfect state of my information I feel that the only proper and prudent course is to wait for the orders which your Lordship will give with a complete knowledge of the whole case."

In communicating to Mr. Seward the demands of Great Britain, which he did on the 19th December, he punctually obeyed his private instructions. He afterwards wrote:—

"I added, that Her Majesty's Government hoped that the Government of the United States would of its own accord offer this reparation; that it was in order to facilitate such an arrangement that I had come to him without any written demand, or even any written paper at all in my hand; that if there was a prospect of attaining this object, I was willing to be guided by him as to the conduct, on my part, which would render its attainment most easy.

"Mr. Seward received my communication seriously, and with dignity, but without any manifestation of dissatisfaction. Some further conversation ensued in consequence of questions put by him, with a

[1] "Lord Lyons, who although a man of prudent reserve, is at the same time entirely truthful."—*Mr. Seward to Mr. Adams*, 5th February, 1862.

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view to ascertain the exact character of the despatch. At the conclusion he asked me to give him to-morrow to consider the question, and to communicate with the President. On the day after he should, he said, be ready to express an opinion with respect to the communication I had made. In the meantime he begged me to be assured that he was very sensible of the friendly and conciliatory manner in which I had made it."[1]

The attention of other European Governments was by this time fixed on a question which might become, by its consequences, so important to all neutral Powers. France, Austria, and Prussia took part in the discussion of it by despatches addressed to their respective Ministers at Washington :—

M. Thouvenel to M. Mercier.

"Monsieur, "*Paris, le* 3 *Décembre*, 1861.

"L'arrestation de MM. Mason et Slidell à bord du paquebot Anglais le *Trent*, par un croiseur Américain, a produit en France, si non la même émotion qu'en Angleterre, au moins un étonnement et une sensation extrêmes. L'opinion publique s'est aussitôt préoccupée de la légitimité et des conséquences d'un acte semblable, et l'impression qu'elle en a ressentie n'a pas été un instant douteuse. Le fait lui a paru tellement en désaccord avec les régles ordinaires du droit international, qu'elle s'est plu à en faire exclusivement peser la responsabilité sur le Commandant du *San Jacinto*. Il ne nous est pas encore donné de savoir si cette supposition est fondée, et le Gouvernement de l'Empereur a dû, dès lors, examiner aussi la question que soulevait l'enlèvement des deux passagers du *Trent*. Le désir de contribuer à prévenir un conflit, imminent peut-être, entre deux Puissances pour lesquelles il est animé de sentiments également amicaux, et le devoir de maintenir, à l'effet de mettre les droits de son propre pavillon à l'abri de toute atteinte, certaines principes essentiels à la sécurité des neutres, l'ont, après mûre réflexion, convaincu qu'il ne pouvait en cette circonstance rester complètement silencieux.

"Si, à notre grand regret, le Cabinet à Washington était disposé à approuver la conduite du Commandant du *San Jacinto*, ce serait en considérant MM. Mason et Slidell comme des ennemis, ou en ne voyant en eux que des rébelles. Dans l'un comme dans l'autre cas, il y aurait un oubli extrèmement fâcheux de principes sur lesquels nous avions toujours trouvé les Etats Unis d'accord avec nous.

"A quel titre, en effet, le croiseur Américain aurait-il, dans le

[1] *Lord Lyons to Earl Russell*, 19th December, 1861.

premier cas, arrêté MM. Mason et Slidell? Les Etats Unis ont admis avec nous, dans les Traités conclus entre les deux pays, que la liberté du pavillon s'étendait aux personnes trouvées à bord, fussent-elles ennemies de l'une des deux parties, à moins qu'il ne s'agit de gens de guerre actuellement au service de l'ennemi. MM. Mason et Slidell étaient donc, en vertu de ce principe que nous n'avons jamais rencontré de difficulté à faire insérer dans nos Traités d'Amitié et de Commerce, parfaitement libres sous le pavillon neutre de l'Angleterre. On ne prétendra pas, sans doute, qu'ils pouvaient être considérés comme contrebande de guerre. Ce qui constitue la contrebande de guerre n'est pas encore, il est vrai, précisément fixé, les limites n'en sont pas absolument les mêmes pour toutes les Puissances. Mais, en ce qui se rapporte aux personnes, les stipulations spéciales qu'on rencontre dans les Traités concernant les gens de guerre définissent nettement le caractère de celles qui peuvent être saisies par les belligérants. Or, il n'est pas besoin de démontrer que MM. Mason et Slidell ne sauraient être assimilés aux personnes de cette catégorie. Il ne resterait, dès lors, d'invoquer, pour expliquer leur capture, que ce prétexte—qu'ils étaient porteurs de dépêches officielles de l'ennemi. Or, c'est ici le moment de rappeler une circonstance qui domine toute cette affaire et qui rend injustifiable la conduite du croiseur Américain. Le *Trent* n'avait pas pour destination un port appartenant à l'un des belligérants. Il portait en pays neutre sa cargaison et ses passagers, et c'était de plus dans un port neutre qu'il les avait pris. S'il était admissible que, dans de telles conditions, le pavillon neutre ne couvrit pas complètement les personnes et les marchandises qu'il transporte, son immunité ne serait plus qu'un vain mot: à chaque instant, le commerce et la navigation des Puissances tierces aurait à souffrir de leurs rapports innocents ou même indirects avec l'un ou l'autre des belligérants. Ces derniers ne se trouveraient plus seulement en droit d'exiger du neutre une entière impartialité, de lui interdire toute immixtion aux actes d'hostilité; ils apporteraient à sa liberté de commerce et de navigation des restrictions dont le droit international moderne s'est refusé d'admettre la légitimité. On en reviendrait, en un mot, à des pratiques vexatoires contre lesquelles, à d'autres époques, aucune Puissance n'a plus vivement protesté que les Etats Unis.

"Si le Cabinet de Washington ne voulait voir dans les deux personnes arrêtés que des rébelles qu'il est toujours en droit de saisir, la question, pour se placer sur un autre terrain, n'en saurait être résolu davantage dans un sens favorable à la conduite du Commandant du *San Jacinto*. Il y aurait, en pareil cas, méconnaissance du principe qui fait d'un navire une portion du territoire de la nation dont il porte le pavillon, et violation de l'immunité qui s'oppose à ce qu'un Souverain étranger y exerce par conséquent sa juridiction. Il n'est pas nécessaire, sans doute, de rappeler l'énergie avec laquelle, en toute occasion, le Gouvernement des Etats Unis a défendu cette immunité et le droit d'asile qui en est la conséquence.

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"Ne voulant pas entrer dans une discussion plus approfondie des questions soulevées par la capture de MM. Mason et Slidell, j'en ai dit assez, je crois, pour établir que le Cabinet de Washington ne saurait, sans porter atteinte à des principes dont toutes les Puissances neutres sont également intéressées à assurer le respect, ni sans se mettre en contradiction avec sa propre conduite jusqu'à ce jour, donner son approbation aux procédés du Commandant du *San Jacinto*. En cet état de choses, il n'a évidemment pas, selon nous, à hésiter sur la détermination à prendre. Lord Lyons est déjà chargé de présenter les demandes de satisfaction que le Gouvernement Anglais est dans la nécessité de formuler, et qui consistent dans la relaxation immédiate des personnes enlevées à bord du *Trent*, et dans l'envoi d'explications qui ôtent à ce fait son caractère offensant pour le pavillon Britannique.

"Le Gouvernement Fédéral s'inspirera d'un sentiment juste et élevé en déférant à ces demandes. On chercherait vainement dans quel but, dans quel intérêt il risquerait de provoquer, par une attitude différente, une rupture avec la Grande Bretagne. Pour nous qui verrions dans ce fait une complication déplorable à tous égards des difficultés avec lesquelles le Cabinet de Washington a déjà à lutter, et un précédent de nature à inquiéter sérieusement toutes les Puissances restées en dehors du conflit actuel, nous croyons donner un témoignage de loyale amitié au Cabinet de Washington en ne lui laissant pas ignorer, en cette circonstance, notre manière de voir. Je vous invite donc, Monsieur, à saisir la première occasion de vous en ouvrir franchement avec Mr. Seward, et, s'il vous en fait la demande, de lui remettre une copie de cette dépêche.

"Recevez, &c.
(Signé) "THOUVENEL."

Count Rechberg to M. de Hulsemann.

"(Confidentiel.) "*Vienne, le* 18 *Décembre*, 1861.

"Le différend survenu entre le Gouvernement des Etats Unis et celui de la Grande Bretagne par suite de l'arrestation de Messrs. Slidell et Mason effectué par le capitaine du navire de guerre Américain le *San Jacinto* à bord du paquebot Anglais le *Trent*, n'a pu manquer de fixer la plus sérieuse attention du Cabinet Impérial.

"Plus nous attachons d'importance au maintien des bonnes relations entre les Etats Unis et l'Angleterre, plus nous avons dû regretter un incident qui est venu ajouter une aussi grave complication à une situation déjà hérissé de difficultés.

"Sans avoir l'intention d'entrer ici dans un examen de la question de droit, nous ne saurions pourtant méconnaître que d'après les notions de droit international adoptés par toutes les Puissances, et que le Gouvernement Américain lui-même a souvent prises pour règle de conduite, l'Angleterre ne pouvait guère se dispenser, dans le cas

présent, de réclamer contre l'atteinte portée à son pavillon, et d'en demander une juste réparation. Il nous semble au surplus que les demandes formulées à cet égard par le Cabinet de St. James n'ont rien de blessant pour le Cabinet de Washington, et que celui-ci pourra faire acte d'équité et de modération sans le moindre sacrifice pour sa dignité.

"En prenant conseil des règles qui guident les relations internationales, ainsi que des considérations d'une politique éclairée, plutôt que des manifestations produites par une surexcitation du sentiment national, le Gouvernement des Etats Unis, nous nous plaisons à l'espérer, apportera dans son appréciation tout le calme que la gravité du cas exige, et jugera convenable de s'arrêter à un parti qui, en préservant d'une rupture les rapports entre deux grands Etats avec lesquels l'Autriche est également liée d'amitié, sera propre à prévenir les graves perturbations que l'éventualité d'une guerre ne pourrait manquer d'entrainer, tant pour chacune des parties contendantes que pour les affaires du globe en général.

"Veuillez, M. le Chevalier, porter les réflexions qui précèdent à la connaissance de Mr. Seward, et nous rendre compte de la manière dont M. le Ministre aura accueilli votre communication.

"Recevez, &c.

(Signé) "RECHBERG."

Count Bernstorff to Baron Gerolt.

(Translation.)

"M. le Baron, "*Berlin, December* 25, 1861.

"The maritime operations undertaken by President Lincoln against the Southern Seceding States could not, from their very commencement, but fill the King's Government with apprehensions lest they should result in possible prejudice to the legitimate interests of neutral Powers.

"These apprehensions have unfortunately proved fully justified by the forcible seizure on board the neutral mail-packet the *Trent*, and the abduction therefrom, of Messrs. Slidell and Mason by the Commander of the United States' man-of-war the *San Jacinto*.

"This occurrence, as you can well imagine, has produced in England and throughout Europe the most profound sensation, and thrown not Cabinets only, but also public opinion, into a state of the most excited expectation. For, although at present it is England only which is immediately concerned in the matter, yet, on the other hand, it is one of the most important and universally recognized rights of the neutral flag which has been called into question.

"I need not here enter into a discussion of the legal side of the question. Public opinion in Europe has, with singular unanimity, pronounced in the most positive manner for the injured party. As far as we are concerned, we have hitherto abstained from expressing our-

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selves to you upon the subject, because in the absence of any reliable information we were in doubt as to whether the Captain of the *San Jacinto*, in the course taken by him, had been acting under orders from his Government or not. Even now we prefer to assume that the latter was the case. Should the former supposition, however, turn out to be the correct one, we should consider ourselves under the necessity of attributing greater importance to the occurrence, and to our great regret we should find ourselves constrained to see in it not an isolated fact but a public menace offered to the existing rights of all neutrals.

"We have as yet no certain information as to the demands made by England on the American Cabinet, upon the acceptance of which the maintenance of peace appears to depend. As far, however, as our information reaches on the subject, we are convinced that no conditions have been put forward by the British Government which could justly offend President Lincoln's sense of honour.

"His Majesty the King, filled with the most ardent wishes for the welfare of the United States of North America, has commanded me to advocate the cause of peace with President Lincoln through your instrumentality, to the utmost of my power. We should reckon ourselves fortunate if we could in this wise succeed in facilitating the peaceful solution of a conflict from which the greatest dangers might arise. It is possible, however, that the President has already taken his decision and announced it. Whatever that decision may be, the King's Government, when they reflect upon the uninterrupted relations of friendship and amity which have existed between Prussia and the United States ever since the latter were founded, will derive satisfaction from the thought of having laid with the most unreserved candour their views of this occurrence before the Cabinet of Washington and expressed the wishes which they entertain in connection with it.

"You will read this despatch without delay to the Secretary of State for Foreign Affairs, and, should he desire it, you will give him a copy of it. I shall await your report upon the instructions contained in this despatch, and I avail, &c.

(Signed) "BERNSTORFF."

The Russian Government expressed the same opinions and the same anxieties, though not in a public despatch. Baron Brunnow wrote at once from London to his colleague at Washington, strongly condemning the seizure, and advising reparation; and Prince Gortschakoff wrote to Washington and London private letters approving the steps taken by Baron Brunnow.

The French despatch was communicated to Mr. Seward on the 25th; and an expression of opinion so clear and assured made it easier, perhaps, for the American Government to take a course which, though imperiously dictated by consistency and true policy, nevertheless required some courage and some conquest over national pride. The President resolved to disavow formally the act of his officer, and to surrender the prisoners. Mr. Seward, on the 26th, informed Lord Lyons of this decision, adding that the discretion and friendly spirit which the Minister had shown throughout, from the day on which intelligence of the seizure had reached Washington, had contributed more than anything else to the settlement of the question. A long and very elaborate note, intended to define the position which the Government thought it right to assume, and to explain the reasons by which it desired to be understood as having been actuated, immediately followed this communication:—

Mr. Seward to Lord Lyons.

"*Department of State, Washington,*
"*December* 26, 1861.

"My Lord,

"Earl Russell's despatch of November 30th, a copy of which you have left with me at my request, is of the following effect, namely:—

"That a letter of Commander Williams, dated Royal Mail Contract Packet-boat *Trent*, at sea, November 9th, states that that vessel left Havana on the 7th November with Her Majesty's mails for England, having on board numerous passengers. Shortly after noon on the 8th of November, the United States' war-steamer *San Jacinto*, Captain Wilkes, not showing colours, was observed ahead. That steamer on being neared by the *Trent*, at 1 o'clock 15 minutes in the afternoon, fired a round shot from a pivot-gun across her bows, and showed American colours. While the *Trent* was approaching slowly towards the *San Jacinto*, she discharged a shell across the *Trent's* bows, which exploded at half a cable's length before her. The *Trent* then stopped, and an officer with a large armed guard of marines boarded her. The officer said he had orders to arrest Messrs. Mason, Slidell, Mc Farland, and Eustis, and had sure information that they were passengers in the *Trent*. While some parley was going on upon this matter, Mr. Slidell stepped forward and said to the American officer that the four persons he had named were standing before him.

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The Commander of the *Trent* and Commander Williams protested against the act of taking those four passengers out of the *Trent*, they then being under the protection of the British flag; but the *San Jacinto* was at this time only 200 yards distant, the ship's company at quarters, her ports open and tompions out, and so resistance was out of the question. The four persons before named were then forcibly taken out of the ship. A farther demand was made that the Commander of the *Trent* should proceed on board the *San Jacinto*, but he said he would not go unless forcibly compelled likewise, and this demand was not insisted upon.

"Upon this statement Earl Russell remarks, that it thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral Power, while that vessel was pursuing a lawful and innocent voyage—an act of violence which was an affront to the British flag, and a violation of international law.

"Earl Russell next says that Her Majesty's Government, bearing in mind the friendly relations which have long subsisted between Great Britain and the United States, are willing to believe that the naval officer who committed this aggression was not acting in compliance with any authority from his Government, or that, if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received.

"Earl Russell argues that the United States must be fully aware that the British Government could not allow such an affront to the national honour to pass without full reparation, and they are willing to believe that it could not be the deliberate intention of the Government of the United States unnecessarily to force into discussion between the two Governments a question of so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

"Earl Russell, resting upon the statement and the argument which I have thus recited, closes with saying that Her Majesty's Government trust that when this matter shall have been brought under the consideration of the Government of the United States, it will of its own accord offer to the British Government such redress as alone could satisfy the British nation, namely, the liberation of the four prisoners taken from the *Trent*, and their delivery to your Lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed. Earl Russell finally instructs you to propose these terms to me, if I should not first offer them on the part of this Government.

"This despatch has been submitted to the President. The British Government has rightly conjectured, what it is now my duty to state, that Captain Wilkes, in conceiving and executing the proceeding in question, acted upon his own suggestions of duty, without any direction or instruction, or even foreknowledge of it, on the part of this Government. No directions had been given to him or any other naval

officer to arrest the four persons named, or any of them, on the *Trent*, or on any other British vessel, or on any other neutral vessel, at the place where it occurred or elsewhere. The British Government will justly infer from these facts that the United States not only have had no purpose, but even no thought, of forcing into discussion the question which has arisen, or any other which could affect in any way the sensibilities of the British nation.

"It is true that a round shot was fired by the *San Jacinto* from her pivot-gun when the *Trent* was distantly approaching. But as the facts have been reported to this Government, the shot was nevertheless intentionally fired in a direction so obviously divergent from the course of the *Trent* as to be quite as harmless as a blank shot, while it should be regarded as a signal.

"So also we learn that the *Trent* was not approaching the *San Jacinto* slowly when the shell was fired across her bows; but, on the contrary, the *Trent* was, or seemed to be, moving under a full head of steam, as if with a purpose to pass the *San Jacinto*.

"We are informed also that the boarding-officer (Lieutenant Fairfax) did not board the *Trent* with a large armed guard, but he left his marines in his boat when he entered the *Trent*. He stated his instructions from Captain Wilkes to search for the four persons named, in a respectful and courteous, though decided, manner; and he asked the Captain of the *Trent* to show his passenger list, which was refused. The Lieutenant, as we are informed, did not employ absolute force in transferring the passengers, but he used just so much as was necessary to satisfy the parties concerned that refusal or resistance would be unavailing.

"So also we are informed that the Captain of the *Trent* was not at any time, or in any way, required to go on board the *San Jacinto*.

"These modifications of the case, as presented by Commander Williams, are based upon our official reports.

"I have now to remind your Lordship of some facts which doubtlessly were omitted by Earl Russell with the very proper and becoming motive of allowing them to be brought into the case on the part of the United States, in the way most satisfactory to this Government.

"These facts are, that at the time the transaction occurred, an insurrection was existing in the United States, which this Government was engaged in suppressing by the employment of land and naval forces; that in regard to this domestic strife, the United States considered Great Britain as a friendly Power, while she had assumed for herself the attitude of a neutral; and that Spain was considered in the same light, and had assumed the same attitude as Great Britain.

"It had been settled by correspondence that the United States and Great Britain mutually recognized, as applicable to this local strife, these two Articles of the Declaration made by the Congress of Paris in 1856, viz., that the neutral or friendly flag should cover enemy's goods,

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not contraband of war; and that neutral goods, not contraband of war, are not liable to capture under an enemy's flag. These exceptions of contraband from favour were a negative acceptance by the parties of the rule hitherto everywhere recognized as a part of the law of nations, that whatever is contraband is liable to capture and confiscation in all cases.

"James M. Mason and McFarland are citizens of the United States and residents of Virginia. John Slidell and George Eustis are citizens of the United States, and residents of Louisiana. It was well known at Havana when these parties embarked on the *Trent*, that James M. Mason was proceeding to England in the affected character of Minister Plenipotentiary to the Court of St. James', under a pretended Commission from Jefferson Davis, who had assumed to be President of the insurrectionary party in the United States, and McFarland was going with him in a like unreal character of Secretary of Legation to the pretended Mission. John Slidell, in similar circumstances, was going to Paris as a pretended Minister to the Emperor of the French; and George Eustis was the chosen Secretary of Legation for that simulated Mission. The fact that these persons had assumed such characters has been since avowed by the same Jefferson Davis in a pretended Message to an unlawful and insurrectionary Congress. It was, as we think, rightly presumed that these Ministers bore pretended credentials and instructions, and such papers are in the law known as despatches. We are informed by our Consul at Paris that these despatches having escaped the search of the *Trent*, were actually conveyed and delivered to emissaries of the insurrection in England.

"Although it is not essential, yet it is proper to state, as I do also upon information and belief, that the owner and agent, and all the officers of the *Trent*, including the Commander Williams, had knowledge of the assumed characters and purposes of the persons before-named when they embarked on that vessel.

"Your Lordship will now perceive that the case before us, instead of presenting a merely flagrant act of violence on the part of Captain Wilkes, as might well be inferred from the incomplete statement of it that went up to the British Government, was undertaken as a simple, legal, and customary belligerent proceeding by Captain Wilkes to arrest and capture a neutral vessel engaged in carrying contraband of war for the use and benefit of the insurgents.

"The question before us is, whether this proceeding was authorized by, and conducted according to, the law of nations.

"It involves the following inquiries:—

"1st. Were the persons named and their supposed despatches contraband of war?

"2nd. Might Captain Wilkes lawfully stop and search the *Trent* for these contraband persons and despatches?

"3rd. Did he exercise that right in a lawful and proper manner?

"4th. Having found the contraband persons on board, and in

presumed possession of the contraband despatches, had he a right to capture the persons?

"5th. Did he exercise that right of capture in the manner allowed and recognized by the law of nations?

"If all these inquiries shall be resolved in the affirmative, the British Government will have no claim for reparation.

"I address myself to the first inquiry, namely, Were the four persons mentioned, and their supposed despatches, contraband?

"Maritime law so generally deals, as its professors say, *in rem*, that is, with property, and so seldom with persons, that it seems a straining of the term 'contraband' to apply it to them. But persons, as well as property, may become contraband, since the word means broadly 'contrary to proclamation, prohibited, illegal, unlawful.' All writers and judges pronounce naval or military persons in the service of the enemy contraband. Vattel says, war allows us to cut off from an enemy all his resources, and to hinder him from sending ministers to solicit assistance; and Sir William Scott says, You may stop the Ambassador of your enemy on his passage. Despatches are not less clearly contraband, and the bearers or couriers who undertake to carry them fall under the same condemnation.

"A subtlety might be raised whether pretended Ministers of an usurping Power, not recognized as legal by either the belligerent or the neutral, could be held to be contraband. But it would disappear on being subjected to what is the true test in all cases, namely, the spirit of the law. Sir William Scott, speaking of civil magistrates who were arrested and detained as contraband, says, 'It appears to me on principle to be but reasonable that when it is of sufficient importance to the enemy that such persons shall be sent out on the public service at the public expense, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations.'

"I trust that I have shown that the four persons who were taken from the *Trent* by Captain Wilkes, and their despatches, were contraband of war.

"The second inquiry is, Whether Captain Wilkes had a right by the law of nations to detain and search the *Trent*.

"The *Trent*, though she carried mails, was a contract or merchant-vessel, a common carrier for hire. Maritime law knows only three classes of vessels—vessels of war, revenue vessels, and merchant-vessels. The *Trent* falls within the latter class. Whatever disputes have existed concerning a right of visitation or search in time of peace, none, it is supposed, has existed in modern times about the right of a belligerent in the time of war to capture contraband in neutral and even friendly merchant-vessels, and of the right of visitation and search in order to determine whether they are neutral and are documented as such according to the law of nations.

"I assume in the present case what, as I read British authorities, is

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regarded by Great Britain herself as true maritime law, that the circumstance that the *Trent* was proceeding from a neutral port to another neutral port does not modify the right of the belligerent captor.

"The third question is, Whether Captain Wilkes exercised the right of search in a lawful and proper manner. If any doubt hung over this point, as the case was presented in the statement of it adopted by the British Government, I think it must already have passed away before the modification of that statement which I have already submitted.

"I proceed to the fourth inquiry, namely, Having found the suspected contraband of war on board the *Trent*, had Captain Wilkes a right to capture the same? Such a capture is the chief, if not the only recognized object of the permitted visitation and search. The principle of the law is, that the belligerent exposed to danger may prevent the contraband persons or things from applying themselves or being applied to the hostile uses or purposes designed. The law is so very liberal in this respect, that, when contraband is found on board a neutral vessel, not only is the contraband forfeited, but the vessel, which is the vehicle of its passage or transportation, being tainted, also becomes contraband, and is subjected to capture and confiscation.

"Only the fifth question remains, namely, Did Captain Wilkes exercise the right of capturing the contraband in conformity with the law of nations?

"It is just here that the difficulties of the case begin.

"What is the manner which the law of nations prescribes for disposing of the contraband, when you have found and seized it on board of the neutral vessel? The answer would be easily found, if the question were what you shall do with the contraband vessel. You must take or send her into a convenient port, and subject her to a judicial prosecution there in Admiralty, which will try and decide the questions of belligerency, neutrality, contraband, and capture. So again you would promptly find the same answer, if the question were, What is the manner of proceeding prescribed by the law of nations in regard to the contraband, if it be property or things of material or pecuniary value? But the question here concerns the mode of procedure in regard, not to the vessel that was carrying the contraband, nor yet to contraband things which worked the forfeiture of the vessel, but to contraband persons.

"The books of law are dumb; yet the question is as important as it is difficult. First, the belligerent captor has a right to prevent the contraband officer, soldier, sailor, minister, messenger, or courier, from proceeding in his unlawful voyage, and reaching the destined scene of his injurious service. But, on the other hand, the person captured may be innocent, that is, he may not be contraband: he therefore has a right to a fair trial of the accusation against him. The neutral State that has taken him under its flag is bound to protect him, if he is not

contraband, and is therefore entitled to be satisfied upon that important question. The faith of that State is pledged to his safety, if innocent, as its justice is pledged to his surrender, if he is really contraband. Here are conflicting claims, involving personal liberty, life, honour, and duty. Here are conflicting national claims, involving welfare, safety, honour, and empire. They require a tribunal and a trial. The captors and the captured are equals, the neutral and the belligerent State are equals.

"While the law authorities were found silent, it was suggested at an early day by this Government, that you should take the captured persons into a convenient port, and institute judicial proceedings there to try the controversy. But only Courts of Admiralty have jurisdiction in maritime cases, and these Courts have formulas to try only claims to contraband chattels, but none to try claims concerning contraband persons. The Courts can entertain no proceedings and render no judgment in favour of or against the alleged contraband men.

"It was replied, All this is true, but you can reach in those Courts a decision which will have the moral weight of a judicial one, by a circuitous proceeding. Convey the suspected men together with the suspected vessel into port, and try there the question whether the vessel is contraband. You can prove it to be so by proving the suspected men to be contraband, and the Court must then determine the vessel to be contraband. If the men are not contraband the vessel will escape condemnation. Still there is no judgment for or against the captured persons; but it was assumed that there would result from the determination of the Court concerning the vessel a legal certainty concerning the character of the men.

"This course of proceeding seemed open to many objections. It elevates the incidental, inferior, private interest, into the proper place of the main, paramount, public one, and possibly it may make the fortunes, the safety, or the existence of a nation depend on the accidents of a merely personal and pecuniary litigation. Moreover, when the judgment of the Prize Court upon the lawfulness of the capture of the vessel is rendered, it really concludes nothing, and binds neither the belligerent State nor the neutral, upon the great question of the disposition to be made of the captured contraband persons. That question is still to be really determined, if at all, by diplomatic arrangement or by war.

"One may reasonably express his surprise when told that the law of nations has furnished no more reasonable, practical, and perfect mode than this of determining questions of such grave import between Sovereign Powers. The regret we may feel on the occasion is, nevertheless, modified by the reflection that the difficulty is not altogether anomalous.

"Similar and equal deficiencies are found in every system of municipal law, especially in the system which exists in the greater portion of Great Britain and the United States. The title to personal property

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can hardly ever be resolved by a Court without resorting to the fiction that the claimant has lost and the possessor has found it, and the title to real estate is disputed by real litigants under the names of imaginary persons. It must be confessed, however, that while all aggrieved nations demand, and all impartial ones concede, the need of some form of judicial process in determining the character of contraband persons, no other form than the illogical and circuitous one thus described exists, nor has any other yet been suggested. Practically, therefore, the choice is between that judicial remedy, or no judicial remedy whatever.

"If there be no judicial remedy, the result is that the question must be determined by the captor himself on the deck of the prize-vessel. Very grave objections arise against such a course. The captor is armed, the neutral is unarmed. The captor is interested, prejudiced, and perhaps violent; the neutral, if truly neutral, is disinterested, subdued, and helpless. The tribunal is irresponsible, while its judgment is carried into instant execution. The captured party is compelled to submit, though bound by no legal, moral, or Treaty obligation to acquiesce. Reparation is distant and problematical, and depends at last on the justice, magnanimity, or weakness of the State in whose behalf and by whose authority the capture was made. Out of these disputes reprisals and wars necessarily arise, and these are so frequent and destructive that it may well be doubted whether this form of remedy is not a greater social evil than all that could follow, if the belligerent right of search were universally renounced and abolished for ever. But carry the case one step further. What if the State that has made the capture unreasonably refuse to hear the complaint of the neutral, or to redress it? In that case the very act of capture would be an act of war—of war begun without notice, and, possibly, entirely without provocation.

"I think all unprejudiced minds will agree that, imperfect as the present judicial remedy may be supposed to be, it would be, as a general practice, better to follow it than to adopt the summary one of leaving the decision with the captor and relying upon diplomatic debates to review his decision. Practically, it is a question of choice between law, with its imperfections and delays, and war with its evils and desolations.

"Nor is it ever to be forgotten that neutrality, honestly and justly preserved, is always the harbinger of peace, and, therefore, is the common interest of nations, which is only saying that it is the interest of humanity itself.

"At the same time it is not to be denied that it may sometimes happen that the judicial remedy will become impossible, as by the shipwreck of the prize vessel, or other circumstances which excuse the captor from sending or taking her into port for confiscation. In such a case the right of the captor to the custody of the captured persons, and to dispose of them, if they are really contraband, so as to defeat their unlawful purposes, cannot be reasonably be denied. What rule

shall be applied in such a case? Clearly the captor ought to be required to show that the failure of the judicial remedy results from circumstances beyond his control and without his fault, otherwise he would be allowed to derive advantages from a wrongful act of his own.

"In the present case, Captain Wilkes, after capturing the contraband persons and making prize of the *Trent*, in what seems to us a perfectly lawful manner, instead of sending her into port, released her from the capture, and permitted her to proceed with her whole cargo upon her voyage. He thus effectually prevented the judicial examination which might otherwise have occurred.

"If now the capture of the contraband persons and the capture of the contraband vessel are to be regarded not as two separable or distinct transactions under the Law of Nations, but as one transaction, one capture only, then it follows that the capture in this case was left unfinished, or was abandoned. Whether the United States have a right to retain the chief public benefits of it, namely, the custody of the captured persons, on proving them to be contraband, will depend upon the preliminary question—whether the leaving of the transaction unfinished was necessary, or whether it was unnecessary and therefore voluntary. If it was necessary, Great Britain, as we suppose, must of course waive the defect, and the consequent failure of the judicial remedy. On the other hand, it is not seen how the United States can insist upon her waiver of that judicial remedy if the defect of the capture resulted from an act of Captain Wilkes, which would be a fault on their own side.

"Captain Wilkes has presented to this Government his reasons for releasing the *Trent*:—

"'I forbore to seize her,' he says, 'in consequence of my being so reduced in officers and crew, and the derangement it would cause innocent persons, there being a large number of passengers who would have been put to great loss and inconvenience, as well as disappointment, from the interruption it would have caused them in not being able to join the steamer from St. Thomas to Europe. I therefore concluded to sacrifice the interest of my officers and crew in the prize, and suffered her to proceed, after the detention necessary to effect the transfer of those Commissioners, considering I had obtained the important end I had in view, and which affected the interests of our country and interrupted the action of the Confederates.'

"I shall consider, first, how these reasons ought to affect the action of this Government; and secondly, how they ought to be expected to affect the action of Great Britain. The reasons are satisfactory to this Government, so far as Captain Wilkes is concerned. It could not desire that the *San Jacinto*, her officers and crew, should be exposed to dangers and loss by weakening their number to detach a prize-crew to go on board the *Trent*. Still less could it disavow the humane motive of preventing inconveniences, losses, and perhaps disasters, to

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the several hundred innocent passengers found on board the prize vessel.

"Nor could this Government perceive any ground for questioning the fact that these reasons, though apparently incongruous, did operate in the mind of Captain Wilkes, and determine him to release the *Trent*. Human actions generally proceed upon mingled and sometimes conflicting motives. He measured the sacrifices which this decision would cost. It manifestly, however, did not occur to him that beyond the sacrifice of the private interests (as he calls them) of his officers and crew, there might also, possibly, be a sacrifice even of the chief and public object of his capture, namely, the right of his Government to the custody and disposition of the captured persons. This Government cannot censure him for this oversight. It confesses that the whole subject came unforeseen upon the Government, as, doubtless, it did upon him. Its present convictions on the point in question are the result of deliberate examination and deduction now made, and not of any impressions previously formed.

"Nevertheless, the question now is, not whether Captain Wilkes is justified to his Government in what he did, but what is the present view of the Government as to the effect of what he has done.

"Assuming now, for argument's sake only, that the release of the *Trent*, if voluntary, involved a waiver of the claim of the Government to hold the captured persons, the United States could in that case have no hesitation in saying that the act which has thus already been approved by the Government must be allowed to draw its legal consequence after it.

"It is of the very nature of a gift or a charity that the giver cannot, after the exercise of his benevolence is past, recall or modify its benefits.

"We are thus brought directly to the question whether we are entitled to regard the release of the *Trent* as involuntary, or whether we are obliged to consider that it was voluntary.

"Clearly the release would have been involuntary had it been made solely upon the first ground assigned for it by Captain Wilkes, namely, a want of sufficient force to send the prize vessel into port for adjudication. It is not the duty of a captor to hazard his own vessel in order to secure a judicial examination to the captured party. No large prize-crew, however, is legally necessary, for it is the duty of the captured party to acquiesce, and go willingly before the tribunal to whose jurisdiction it appeals. If the captured party indicate purposes to employ means of resistance which the captor cannot with probable safety to himself overcome, he may properly leave the vessel to go forward, and neither she nor the State she represents can ever afterwards justly object that the captor deprived her of the judicial remedy to which she was entitled.

"But the second reason assigned by Captain Wilkes for releasing the *Trent* differs from the first. At best, therefore, it must be held that Captain Wilkes, as he explains himself, acted from combined

sentiments of prudence and generosity, and so that the release of the prize vessel was not strictly necessary or involuntary.

"Secondly, how ought we to expect these explanations by Captain Wilkes of his reasons for leaving the capture incomplete to affect the action of the British Government? The observation upon this point which first occurs, is that Captain Wilkes's explanations were not made to the authorities of the captured vessel. If made known to them, they might have approved and taken the release upon the condition of waiving a judicial investigation of the whole transaction, or they might have refused to accept the release upon that condition.

"But the case is one not with them, but with the British Government. If we claim that Great Britain ought not to insist that a judicial trial has been lost because we voluntarily released the offending vessel out of consideration for her innocent passengers, I do not see how she is to be bound to acquiesce in the decision which was thus made by us without necessity on our part, and without knowledge of conditions or consent on her own. The question between Great Britain and ourselves thus stated would be a question not of right and of law, but of favour to be conceded by her to us in return for favours shown by us to her, of the value of which favours on both sides we ourselves shall be the judge. Of course the United States could have no thought of raising such a question in any case.

"I trust that I have shown, to the satisfaction of the British Government, by a very simple and natural statement of the facts and analysis of the law applicable to them, that this Government has neither meditated, nor practised, nor approved any deliberate wrong in the transaction to which they have called its attention, and, on the contrary, that what has happened has been simply an inadvertency, consisting in a departure by a naval officer, free from any wrongful motive, from a rule uncertainly established, and probably by the several parties concerned either imperfectly understood or entirely unknown. For this error the British Government has a right to expect the same reparation that we, as an independent State, should expect from Great Britain or from any other friendly nation in a similar case.

"I have not been unaware that in examining this question I have fallen into an argument for what seems to be the British side of it against my own country, but I am relieved from all embarrassment on that subject. I had hardly fallen into that line of argument when I discovered that I was really defending and maintaining, not an exclusively British interest, but an old, honoured, and cherished American cause, not upon British authority, but upon principles that constitute a large portion of the distinctive policy by which the United States have developed the resources of a Continent, and, thus becoming a considerable maritime Power, have won the respect and confidence of many nations. These principles were laid down for us in 1804 by James Madison, when Secretary of State in the Administration of Thomas Jefferson, in instructions given to James Munroe, our Minister

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to England. Although the case before him concerned a description of persons different from those who are incidentally the subjects of the present discussion, the ground he assumed then was the same I now occupy, and the arguments by which he sustained himself upon it have been an inspiration to me in preparing this reply.

"'Whenever,' he says, 'property found in a neutral vessel is supposed to be liable on any ground to capture and condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of his power. Can it be reasonable, then, or just, that a belligerent commander who is thus restricted and thus responsible in a case of mere property, of trivial amount, should be permitted, without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiance, and to carry that decision into execution by forcing every individual he may choose into a service abhorrent to his feelings, cutting him off from his most tender connections, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest dangers? Reason, justice, and humanity unite in protesting against so extravagant a proceeding.'

"If I decide this case in favour of my own Government, I must disallow its most cherished principles, and reverse and for ever abandon its essential policy. The country cannot afford the sacrifice. If I maintain those principles and adhere to that policy, I must surrender the case itself. It will be seen, therefore, that this Government could not deny the justice of the claim presented to us in this respect upon its merits. We are asked to do to the British nation just what we have always insisted all nations ought to do to us.

"The claim of the British Government is not made in a discourteous manner. This Government, since its first organization, has never used more guarded language in a similar case.

"In coming to my conclusion I have not forgotten that, if the safety of this Union required the detention of the captured persons, it would be the right and duty of this Government to detain them. But the effectual check and waning proportions of the existing insurrection, as well as the comparative unimportance of the captured persons themselves, when dispassionately weighed, happily forbid me from resorting to that defence.

"Nor am I aware that American citizens are not in any case to be unnecessarily surrendered for any purpose into the keeping of a foreign State: only the captured persons, however, or others who are interested in them, could justly raise a question on that ground.

"Nor have I been tempted at all by suggestions that cases might be found in history where Great Britain refused to yield to other nations, and even to ourselves, claims like that which is now before us. Those cases occurred when Great Britain, as well as the United

States, was the home of generations which, with all their peculiar interests and passions, have passed away. She could in no other way so effectually disavow any such injury, as we think she does by assuming now as her own the ground upon which we then stood.

"It would tell little for our own claims to the character of a just and magnanimous people, if we should so far consent to be guided by the law of retaliation as to lift up buried injuries from their graves, to oppose against what national consistency and the national conscience compel us to regard as a claim intrinsically right.

"Putting behind me all suggestions of this kind, I prefer to express my satisfaction, that by the adjustment of the present case upon principles confessedly American, and yet, as I trust, mutually satisfactory to both of the nations concerned, a question is finally and rightly settled between them, which heretofore exhausting not only all forms of peaceful discussion, but also the arbitrament of war itself, for more than half-a-century alienated the two countries from each other, and perplexed with fears and apprehensions all other nations.

"The four persons in question are now held in military custody at Fort Warren in the State of Massachusetts. They will be cheerfully liberated.

"Your Lordship will please indicate a time and place for receiving them.

"I avail, &c.
(Signed) "WILLIAM H. SEWARD."

On the 30th December the prisoners were sent in a tug-boat from Fort Warren to Provincetown, a small sea-port in Massachusetts, forty miles from Boston. Here they were put on board Her Majesty's ship *Rinaldo*, and conveyed to Halifax, whence they subsequently found their way to England.

The reply of the British Government to the Government of the United States was conveyed in two despatches, one accepting the reparation offered, the other disputing the positions, and controverting much of the reasoning, by which that reparation had been accompanied:—

Earl Russell to Lord Lyons.

"My Lord, "*Foreign Office, January* 10, 1862.

"In my despatch to you of the 30th of November, after informing you of the circumstances which had occurred in relation to the capture of the four persons taken from on board the *Trent*, I stated to you

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that it thus appeared that certain individuals had been forcibly taken from on board a British vessel, the ship of a neutral Power, while such vessel was pursuing a lawful and innocent voyage; an act of violence which was an affront to the British flag, and a violation of international law. I concluded by directing you, in case the reparation which Her Majesty's Government expected to receive, should not be offered by Mr. Seward, to propose to that Minister to make such redress as alone would satisfy the British nation, namely, first, the liberation of the four gentlemen taken from on board the *Trent*, and their delivery to your Lordship in order that they might again be placed under British protection; and secondly, a suitable apology for the aggression which had been committed.

"I received, yesterday, your despatch of the 27th ultimo, inclosing a note to you from Mr. Seward, which is in substance the answer to my despatch of the 30th of November.

"Proceeding at once to the main points in discussion between us, Her Majesty's Government have carefully examined how far Mr. Seward's note, and the conduct it announces, complies substantially with the two proposals I have recited.

"With regard to the first, viz., the liberation of the prisoners with a view to their being again placed under British protection, I find that the note concludes by stating that the prisoners will be cheerfully liberated, and by calling upon your Lordship to indicate a time and place for receiving them. No condition of any kind is coupled with the liberation of the prisoners.

"With regard to the suitable apology which the British Government had a right to expect, I find that the Government of the United States distinctly and unequivocally declares that no directions had been given to Captain Wilkes, or to any other naval officer, to arrest the four persons named, or any of them, on the *Trent*, or on any other British vessel, or on any other neutral vessel, at the place where it occurred or elsewhere.

"I find further, that the Secretary of State expressly forbears to justify the particular act of which Her Majesty's Government complained. If the United States' Government had alleged that, although Captain Wilkes had no previous instruction for that purpose, he was right in capturing the persons of the four prisoners, and in removing them from the *Trent*, on board his own vessel, to be afterwards carried into a port of the United States, the Government which had thus sanctioned the proceeding of Captain Wilkes would have become responsible for the original violence and insult of the act. But Mr. Seward contents himself with stating that what has happened has been simply an inadvertency, consisting in a departure by a naval officer, free from any wrongful motive, from a rule uncertainly established, and probably by the several parties concerned either imperfectly understood or entirely unknown. The Secretary of State goes on to affirm that for this error the British Government has a right to expect

the same reparation which the United States as an independent State should expect from Great Britain or from any other friendly nation in a similar case.

"Her Majesty's Government having carefully taken into their consideration the liberation of the prisoners, the delivery of them into your hands, and the explanations to which I have just referred, have arrived at the conclusion that they constitute the reparation which Her Majesty and the British nation had a right to expect.

"It gives Her Majesty's Government great satisfaction to be enabled to arrive at a conclusion favourable to the maintenance of the most friendly relations between the two nations. I need not discuss the modifications in my statement of facts which Mr. Seward says he has derived from the reports of officers of his Government.

"I cannot conclude, however, without adverting shortly to the discussions which Mr. Seward has raised upon points not prominently brought into question in my despatch of the 30th of November. I there objected, on the part of Her Majesty's Government, to that which Captain Wilkes had done. Mr. Seward, in his answer, points out what he conceives Captain Wilkes might have done without violating the law of nations.

"It is not necessary that I should here discuss in detail the five questions ably argued by the Secretary of State, but it is necessary that I should say that Her Majesty's Government differ from Mr. Seward in some of the conclusions at which he has arrived; and it may lead to a better understanding between the two nations, on several points of international law which may, during the present contest, or at some future time, be brought into question, that I should state to you for communication to the Secretary of State wherein those differences consist. I hope to do so in a few days.

"In the meantime it will be desirable that the Commanders of the United States' cruisers should be instructed not to repeat acts for which the British Government will have to ask for redress, and which the United States' Government cannot undertake to justify.

"You will read and give a copy of this despatch to the Secretary of State.

"I am, &c.
(Signed) "RUSSELL."

Earl Russell to Lord Lyons.

"My Lord, "*Foreign Office, January* 23, 1862.

"I mentioned in my despatch of the 10th instant that Her Majesty's Government differed from Mr. Seward in some of the conclusions at which he had arrived; and that I should state to you on a future occasion wherein these differences consisted. I now proceed to do so.

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"It is necessary to observe that I propose to discuss the questions involved in this correspondence solely on the principles of international law. Mr. Seward himself, speaking of the capture of the four gentlemen taken from on board the *Trent*, says: 'The question before us is whether this proceeding was authorized by and conducted according to the law of nations.' This is, in fact, the nature of the question which has been but happily is no longer at issue. It concerned the respective rights of belligerents and of neutrals. We must therefore discard entirely from our minds the allegation that the captured persons were rebels, and we must consider them only as enemies of the United States at war with its Government, for that is the ground on which Mr. Seward ultimately places the discussion. It is the only ground upon which foreign Governments can treat it.

"The first inquiry that arises therefore is, as Mr. Seward states it, 'Were the persons named and their supposed despatches contraband of war?'

"Upon this question Her Majesty's Government differ entirely from Mr. Seward.

"The general right and duty of a neutral Power to maintain its own communications and friendly relations with both belligerents cannot be disputed. 'A neutral nation,' says Vattel,[1] 'continues, with the two parties at war, in the several relations Nature has placed between nations. It is ready to perform towards both of them all the duties of humanity, reciprocally due from nation to nation.' In the performance of these duties, on both sides, the neutral nation has itself a most direct and material interest; especially when it has numerous citizens resident in the territories of both belligerents; and when its citizens, residents both there and at home, have property of great value in the territories of the belligerents, which may be exposed to danger from acts of confiscation and violence if the protection of their Government should be withheld. This is the case with respect to British subjects during the present civil war in North America.

"Acting upon these principles, Sir William Scott, in the case of the *Caroline*,[2] during the war between Great Britain and France, decided that the carrying of despatches from the French Ambassador resident in the United States to the Government of France by an United States' merchant-ship was no violation of the neutrality of the United States in the war between Great Britain and France, and that such despatches could not be treated as contraband of war. 'The neutral country,' he said, 'has a right to preserve its relations with the enemy, and you are not at liberty to conclude that any communication between them can partake, in any degree, of the nature of

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[1] Vattel, lib. iii, cap. 7, sec. 118.

[2] *The Caroline* (6 Chr. Rob., 461); cited and approved by Wheaton (*Elements*, part iv, chap. 3, sec. 22).

hostility against you. The enemy may have his hostile projects to be attempted with the neutral State, but your reliance is on the integrity of that neutral State, that it will not favour nor participate in such designs, but, as far as its own councils and actions are concerned, will oppose them. And if there should be private reasons to suppose that this confidence in the good faith of the neutral State has a doubtful foundation, that is matter for the caution of the Government, to be counteracted by just measures of preventive policy; but it is no ground on which this Court can pronounce that the neutral carrier has violated his duty by bearing despatches, which, as far as he can know, may be presumed to be of an innocent nature, and in the maintenance of a pacific connection.' And he continues, shortly afterwards: 'It is to be considered also, with regard to this question, what may be due to the convenience of the neutral State; for its interests may require that the intercourse of correspondence with the enemy's country should not be altogether interdicted. It might be thought to amount almost to a declaration that an Ambassador from the enemy shall not reside in the neutral State, if he is declared to be debarred from the only means of communicating with his own. For to what useful purpose can he reside there without the opportunities of such a communication? It is too much to say that all the business of the two States shall be transacted by the Minister of the neutral State resident in the enemy's country. The practice of nations has allowed to neutral States the privilege of receiving Ministers from the belligerent States, and the use and convenience of an immediate negotiation with them.'

"That these principles must necessarily extend to every kind of diplomatic communication between Government and Government, whether by sending or receiving Ambassadors or Commissioners personally, or by sending or receiving despatches from or to such Ambassadors or Commissioners, or from or to the respective Governments, is too plain to need argument; and it seems no less clear that such communications must be as legitimate and innocent in their first commencement as afterwards, and that the rule cannot be restricted to the case in which diplomatic relations are already formally established by the residence of an accredited Minister of the belligerent Power in the neutral country. It is the neutrality of the one party to the communications, and not either the mode of the communication or the time when it first takes place, which furnishes the test of the true application of the principle. The only distinction arising out of the peculiar circumstances of a civil war and of the non-recognition of the independence of the *de facto* Government of one of the belligerents, either by the other belligerent or by the neutral Power, is this: that 'for the purpose of avoiding the difficulties which might arise from a formal and positive solution of these questions, Diplomatic Agents are frequently substituted, who are clothed with the powers and enjoy the immunities of Ministers, though they are not invested with the repre-

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sentative character, nor entitled to diplomatic honours.'[1] Upon this footing Messrs. Mason and Slidell, who are expressly stated by Mr. Seward to have been sent as pretended Ministers Plenipotentiary from the Southern States to the Courts of St. James's and of Paris, must have been sent, and would have been, if at all, received; and the reception of these gentlemen upon this footing could not have been justly regarded, according to the law of nations, as a hostile or unfriendly act towards the United States. Nor, indeed, is it clear that these gentlemen would have been clothed with any powers, or have enjoyed any immunities, beyond those accorded to Diplomatic Agents not officially recognized.

"It appears to Her Majesty's Government to be a necessary and certain deduction from these principles, that the conveyance of public Agents of this character from Havana to St. Thomas on their way to Great Britain and France, and of their credentials or despatches (if any), on board the *Trent*, was not and could not be a violation of the duties of neutrality on the part of that vessel: and, both for that reason, and also because the destination of these persons and of their despatches was *bonâ fide* neutral, it is in the judgment of Her Majesty's Government clear and certain that they were not contraband.

"The doctrine of contraband has its whole foundation and origin in the principle which is nowhere more accurately explained than in the following passage of Bynkershoek. After stating in general terms the duty of impartial neutrality, he adds:—'Et sane id, quod modo dicebam, non tantum ratio docet, sed et usus, inter omnes fere gentes receptus. Quamvis enim libera sint cum amicorum nostrorum hostibus commercia, usu tamen placuit, ne alterutrum his rebus juvemus, quibus bellum contra amicos nostros instruatur et foveatur. Non licet igitur alterutri advehere ea, quibus in bello gerendo opus habet; ut sunt tormenta, arma, et quorum præcipuus in bello usus, milites. . . . . Optimo jure interdictum est, ne quid eorum hostibus subministremus; quia his rebus nos ipsi quodammodo videremur amicis nostris bellum facere.'[2]

"The principle of contraband of war is here clearly explained; and it is impossible that men, or despatches, which do not come within that principle, can in this sense be contraband. The penalty of knowingly carrying contraband of war is, as Mr. Seward states, nothing less than the confiscation of the ship; but it is impossible that this penalty can be incurred when the neutral has done no more than employ means usual among nations for maintaining his own proper relations with one of the belligerents. It is of the very essence of the definition of contraband that the articles should have a hostile, and not

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[1] Wheaton: *Elements*, part iii, chap. 1, sec. 5.

[2] Bynkershoek: *Quæst. Jur. Publ.*, lib. i, cap. 9.

a neutral, destination. 'Goods,' says Lord Stowell,[1] 'going to a neutral port cannot come under the description of contraband, all goods going there being equally lawful.' 'The rule respecting contraband,' he adds, 'as I have always understood it, is, that articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy's port.' On what just principle can it be contended that a hostile destination is less necessary, or a neutral destination more noxious, for constituting a contraband character in the case of public agents or despatches, than in the case of arms and ammunition?

"Mr. Seward seeks to support his conclusion on this point by a reference to the well-known dictum of Sir William Scott in the case of the *Caroline*, that 'you may stop the Ambassador of your enemy on his passage;'[2] and to another dictum of the same Judge, in the case of the *Orozembo*, that civil functionaries, 'if sent for a purpose intimately connected with the hostile operations,'[3] may fall under the same rule with persons whose employment is directly military.

"These quotations are, as it seems to Her Majesty's Government, irrelevant. The words of Sir W. Scott are in both cases applied by Mr. Seward in a sense different from that in which they were used. Sir William Scott does not say that an Ambassador sent from a belligerent to a neutral State may be stopped as contraband while on his passage on board a neutral vessel belonging to that or any other neutral State; nor that, if he be not contraband, the other belligerent would have any right to stop him on such a voyage. The sole object which Sir William Scott had in view was to explain the extent and limits of the doctrine of the inviolability of Ambassadors, in virtue of that character; for he says:—

"'The limits that are assigned to the operations of war against them by Vattel and other writers upon these subjects, are, that you may exercise your right of war against them wherever the character of hostility exists. You may stop the Ambassadors of your enemy on his passage; but when he has arrived, and has taken upon him the functions of his office, and has been admitted in his representative character, he becomes a sort of middle-man, entitled to peculiar privileges, as set apart for the protection of the relations of amity and peace, in maintaining which nations are in some degree interested.'

"There is certainly nothing in this passage from which an inference can be drawn so totally opposed to the general tenor of the whole Judgment, as that an Ambassador proceeding to the country to which he is sent on board a neutral vessel belonging to that country can be

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[1] *The Imina;* 3 Chr. Rob., 167.
[2] *The Caroline;* 6 Chr. Rob., 468.
[3] *The Orozembo;* 6 Chr. Rob., 434.

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stopped on the ground that the conveyance of such an Ambassador is a breach of neutrality, which it must be if he be contraband of war. Sir William Scott is here expressing not his own opinion merely, but the doctrine which he considers to have been laid down by writers of authority upon the subject. No writer of authority has ever suggested that an Ambassador proceeding to a neutral State on board one of its merchant-ships is contraband of war. The only writer named by Sir William Scott is Vattel,[1] whose words are these: 'On peut encore attaquer et arrêter ses gens' (*i. e.*, gens de l'ennemi) 'partout ou on a la liberté d'exercer des actes d'hostilité. Non seulement donc on peut justement refuser le passage aux Ministres qu'un ennemi envoye à d'autres Souverains; on les arrête même, s'ils entreprennent de passer secrètement et sans permission dans les lieux dont on est maître.'

"And he adds as an example, the seizure of a French Ambassador, when passing through the dominions of Hanover during war between England and France, by the King of England, who was also Sovereign of Hanover.

"The rule, therefore, to be collected from these authorities is, that you may stop an enemy's Ambassador in any place of which you are yourself the master, or in any other place where you have a right to exercise acts of hostility. Your own territory, or ships of your own country, are places of which you are yourself the master. The enemy's territory, or the enemy's ships, are places in which you have a right to exercise acts of hostility. Neutral vessels, guilty of no violation of the laws of neutrality, are places where you have no right to exercise acts of hostility.

"It would be an inversion of the doctrine that Ambassadors have peculiar privileges to argue that they are less protected than other men. The right conclusion is that an Ambassador sent to a neutral Power is inviolable on the high seas, as well as in neutral waters, while under the protection of the neutral flag.

"The other dictum of Sir William Scott, in the case of the *Orozembo*, is even less pertinent to the present question. That related to the case of a neutral ship which, upon the effect of the evidence given on the trial, was held by the Court to have been engaged as an enemy's transport, to convey the enemy's military officers, and some of his civil officers whose duties were intimately connected with military operations, from the enemy's country to one of the enemy's colonies, which was about to be the theatre of those operations, the whole being done under colour of a simulated neutral destination. But as long as a neutral Government, within whose territory no military operations are carried on, adheres to its profession of neutrality, the duties of civil officers on a mission to that Government and within its territory cannot possibly be 'connected with' any

[1] Vattel, lib. iv, cap. 7, sec. 85.

'military operations,' in the sense in which these words were used by Sir William Scott, as, indeed, is rendered quite clear by the passages already cited from his own Judgment in the case of the *Caroline*.

"In connection with this part of the subject it is necessary to notice a remarkable passage in Mr. Seward's note in which he says: 'I assume, in the present case, what, as I read British authorities, is regarded by Great Britain herself as true maritime law—that the circumstance that the *Trent* was proceeding from a neutral port to another neutral port does not modify the right of the belligerent capture.' If, indeed the immediate and ostensible voyage of the *Trent* had been to a neutral port, but her ultimate and real destination to some port of the enemy, Her Majesty's Government might have been better able to understand the reference to British authorities contained in this passage. It is undoubtedly the law as laid down by British authorities, that if the real destination of the vessel be hostile (that is, to the enemy or the enemy's country), it cannot be covered and rendered innocent by a fictitious destination to a neutral port. But if the real terminus of the voyage be *bonâ fide* in a neutral territory, no English, nor indeed, as Her Majesty's Government believe, any American authority can be found which has ever given countenance to the doctrine that either men or despatches can be subject, during such a voyage, and on board such a neutral vessel, to belligerent capture as contraband of war. Her Majesty's Government regard such a doctrine as wholly irreconcilable with the true principles of maritime law; and certainly with those principles as they have been understood in the Courts of this country.

"It is to be further observed that packets engaged in the postal service, and keeping up the regular and periodical communications between the different countries of Europe and America, and other parts of the world, though in the absence of Treaty stipulations they may not be exempted from visit and search in time of war, nor from the penalties of any violation of neutrality, if proved to have been knowingly committed, are still, when sailing in the ordinary and innocent course of their legitimate employment, which consists in the conveyance of mails and passengers, entitled to peculiar favour and protection from all Governments in whose service they are engaged. To detain, disturb, or interfere, with them, without the very gravest cause, would be an act of a most noxious and injurious character, not only to a vast number and variety of individual and private interests, but to the public interests of neutral and friendly Governments.

"It has been necessary to dwell upon these points in some detail, because they involve principles of the highest importance, and because, if Mr. Seward's argument were acted upon as sound, the most injurious consequences might follow.

"For instance, in the present war, according to Mr. Seward's doctrine, any packet-ship carrying a Confederate Agent from Dover to Calais, or from Calais to Dover, might be captured and carried to New

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York. In case of a war between Austria and Italy, the conveyance of an Italian Minister or Agent might cause the capture of a neutral packet plying between Malta and Marseilles, or between Malta and Gibraltar, the condemnation of the ship at Trieste, and the confinement of the Minister or Agent in an Austrian prison. So in the late war between Great Britain and France on the one hand, and Russia on the other, a Russian Minister going from Hamburg to Washington in an American ship might have been brought to Portsmouth, the ship might have been condemned, and the Minister sent to the Tower of London. So also a Confederate vessel of war might capture a Cunard steamer on its way from Halifax to Liverpool, on the ground of its carrying despatches from Mr. Seward to Mr. Adams.

"In view, therefore, of the erroneous principles asserted by Mr. Seward, and the consequences they involve, Her Majesty's Government think it necessary to declare that they would not acquiesce in the capture of any British merchant-ship in circumstances similar to those of the *Trent*, and that the fact of its being brought before a Prize Court, though it would alter the character, would not diminish the gravity, of the offence against the law of nations which would thereby be committed.

"Having disposed of the question whether the persons named and their supposed despatches were contraband of war, I am relieved from the necessity of discussing the other questions raised by Mr. Seward, namely, whether Captain Wilkes had lawfully a right to stop and search the *Trent* for these persons and their supposed despatches; whether that right, assuming that he possessed it, was exercised by him in a lawful and proper manner; and whether he had a right to capture the persons found on board.

"The fifth question put by Mr. Seward, namely, whether Captain Wilkes exercised the alleged right of capture in the manner allowed and recognized by the law of nations, is resolved by Mr. Seward himself in the negative.

"I cannot conclude, however, without noticing one very singular passage in Mr. Seward's despatch.

"Mr. Seward asserts that 'if the safety of this Union required the detention of the captured persons it would be the right and duty of this Government to detain them.' He proceeds to say that the waning proportions of the insurrection, and the comparative unimportance of the captured persons themselves, forbid him from resorting to that defence. Mr. Seward does not here assert any right founded on international law, however inconvenient or irritating to neutral nations: he entirely loses sight of the vast difference which exists between the exercise of an extreme right and the commission of an unquestionable wrong. His frankness compels me to be equally open, and to inform him that Great Britain could not have submitted to the perpetration of that wrong, however flourishing might have been the insurrection in the South, and however important the persons captured might have been.

"Happily all danger of hostile collision on this subject has been avoided. It is the earnest hope of Her Majesty's Government that similar dangers, if they should arise, may be averted by peaceful negotiations conducted in the spirit which befits the organs of two great nations.

"I request you to read this despatch to Mr. Seward, and give him a copy of it.

"I am, &c.
(Signed) "RUSSELL."

Without entering into a discussion of this case, or criticising the arguments on either side, I shall state the questions to which it appears to have given rise, and the situation in which it left them. These questions are two—one, raised directly by the act of Captain Wilkes, which required and received a decision; the other, raised hypothetically by the American Government, which the close of the controversy left open.

1. Is it lawful for a belligerent, exercising his right of visit and search on the high seas, to take persons, not serving the enemy in a military capacity, out of a neutral ship, not judicially proved to have forfeited the character of a neutral? All opinions concur that this is not lawful.

2. Does a neutral ship forfeit that character and expose itself to condemnation by conveying, as passengers, from one neutral port to another, persons going as diplomatic agents of the enemy to a neutral country? The American Government maintains the affirmative of this question, if not in all cases, at least in a case where the agent has not yet acquired an official character, and the community he is commissioned to represent has not been recognized as independent. It insists on the affirmative even where the ship is a regular packet, carrying mails, goods, and passengers, and making her regular voyage from and to her accustomed ports, the persons themselves taking their berths as ordinary passengers, and coming on board in the usual way. The British Government maintains the negative,

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and other European Governments appear to be of the same opinion, which is, I think, the sounder and more reasonable.

These two questions are really part of a larger subject, the outlines of which are as yet but vaguely and imperfectly drawn. The following propositions, though condensed, will be intelligible to lawyers. I state them with diffidence; but they are, I believe, not far from the truth.

1. A neutral ship, conveying persons in the enemy's employment, whether military or civil, is not liable to condemnation as prize, unless, on a consideration of all the circumstances, the Court comes to the conclusion that she is serving the enemy as a transport, and so as to assist substantially, though not perhaps directly, his military operations.

2. If it be proved that the ship, though owned by a neutral, was actually hired for such a purpose by the enemy, it is immaterial whether the persons conveyed are many or few, important or insignificant, and whether the purpose of the hiring was or was not known by the master or owner. I understand by hiring, any contract which gives the actual control and disposal of the ship to the enemy.

3. If, on the other hand, such a hiring by the enemy be not shown, it then becomes necessary to prove that the service performed was in its nature such as is rendered by a transport. The number of the persons conveyed, the nature of their employment, their importance, their immediate or ultimate destination, may then become material elements of proof; and there should be evidence of intention, or of knowledge from which intention may be reasonably inferred, on the part of the owner, or his agent, the master.

4. It is incorrect, therefore, to speak of the conveyance of such persons as if it were the same thing as the conveyance of "contraband of war," or as if the same

rules were applicable to it. It is a different thing, and the rules applicable to it are different.

5. The fact that the voyage is to end at a neutral port is not conclusive against condemnation, but is a strong argument against it, and would indeed be practically conclusive in most cases, especially if coupled with proof that the ship was pursuing her ordinary employment.

6. It is not lawful, on the high seas, to take persons, whatever their character, as prisoners out of a neutral ship which has not been judicially proved to have forfeited the benefit of her neutral character.

CHAPTER X.

Commencement of the Blockade.—Peculiar Character of the Southern Coast.—Effects of this on the Blockade.—Questions which arose.—Observations.

We have seen that a blockade of the Southern ports was the first object which engaged the attention of the Federal Government, that the most strenuous exertions were made to collect as quickly as possible a blockading force, and that the task was an arduous one, the small navy of the United States being at that time chiefly dispersed in distant seas, whilst of the few ships at home a considerable proportion were unfit for service.

The extent of coast covered by the two Proclamations of the 19th and 27th of April was immense; but its conformation and character, whilst they added at some points to the difficulty of blockading it effectually, rather diminished that difficulty on the whole. The Southern rivers, descending from the slopes of the lower Alleghany ranges, flow seawards across a level plain chiefly composed of fine sand, the breadth of which is from fifty to a hundred miles or more, sterile for the most part, but cultivable where it is mixed with mould, and containing, with large tracts of forest and swamp, patches of extremely fertile soil. The plain, as it approaches the sea, becomes intersected by smaller streams, which are fed by the inland swamps; it is indented by creeks and bays, and threaded by intricate channels opening into broad lagoons of still water.

Narrow banks of hard sand, pierced at considerable distances by shallow inlets, skirt the shore for hundreds of miles; whilst elsewhere it is fringed by numerous islands, scarcely rising above the tide, some of which produce a long-stapled cotton, the finest and most valuable in the world. Every river has a bar at its mouth. There are many shoals; and local names, such as Cape Lookout and Cape Fear, bear witness here and there to the dangerous character of the navigation. In short, the coast is for a great part of its length practically unapproachable: it has many small harbours, but very few capable of admitting large ships, and these more or less difficult of access, especially at low tide; on the other hand, it has long reaches of inland navigation, opening at intervals into the sea, and easily traversable by vessels of light draught.

The two Proclamations, though they gave notice to all the world that a blockade was about to be instituted, did not convey, in the technical sense of the phrase, a "notification" of the existence of a blockade. At each particular port or place on the coast the blockade began at, and not before, the time when an adequate blockading force arrived on the spot; it then took effect as a blockade *de facto*, continued as long as an adequate force was maintained there, and ceased when it was withdrawn. It need hardly be said that any period allowed for the egress of neutral ships from a blockaded port could only be fairly counted from the time at which the existence of the blockade was, or might reasonably be deemed to be, known at the port. Where the blockading force is stationed at a considerable distance from the port itself —as may be the case when it lies off the mouth of a navigable river—this observation may become material.

The announcement of the blockade naturally created much anxiety amongst British subjects resident in America and trading from or with the Southern ports; and, on the 29th April, Lord Lyons obtained an interview

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with Mr. Seward, an account of which is given in the following extracts from a despatch of the 2nd May:—

"I have made it my business, since the entrance of the present Administration into office nearly two months ago, to endeavour to ascertain precisely their intentions with regard to the commerce of foreign nations with the States which have withdrawn from the Union. Up to the day before the blockade was announced, the Government had not itself come to any decision on the subject. Nor did I think it expedient to press it to make any declaration so long as the commercial operations of British merchants and British vessels in the seceded States were carried on without hindrance and without inconvenience. But since the blockade has been proclaimed, I have thought myself entitled to ask with persistence for definite information respecting the mode in which it is to be carried into effect. I had in particular a long conversation on the subject with Mr. Seward, in presence of the Chief Clerk of the State Department, on the 29th ultimo. I had prepared Mr. Seward for the interview by suggesting to him, through the Under-Secretary of State, the advisableness of diminishing the disagreeable impression which the announcement of the blockade would make abroad, by giving, as soon as possible, definite assurances that it would be carried on with a liberal consideration for the interests of foreign nations.

"So far as assurances in general terms go, nothing could be more satisfactory than Mr. Seward's language. I did not, however, succeed in obtaining at the time as definite a declaration of the rules which would be observed as I had hoped.

"The principle point to which I drew Mr. Seward's attention was the extreme vagueness of the information which was given to us. I referred him to the notifications of blockades made by Great Britain during the late war with Russia, and pointed out to him the care and precision with which every particular was stated in them. I asked whether it was intended to issue similar notices for each Southern port as soon as the actual blockade of it should commence.

"The reply which I received was, that the practice of the United States was not to issue such notices, but to notify the blockade individually to each vessel approaching the blockaded port, and to inscribe a memorandum of the notice having been given on the ship's papers. No vessel was liable to seizure which had not been individually warned. This plan had, I was assured, been found to be in practice the most convenient and the fairest to all parties. The fact of there being blockading ships present to give the warning was the best notice and best proof that the port was actually and effectually blockaded.

"The principal objection to the plan appeared to me to be that it might in some cases expose foreign vessels to the loss and inconvenience

of making a useless voyage, which a more general and public announcement of the blockade would have prevented.

"I observed to Mr. Seward that the limits of the blockade which it was intended to establish were not clearly stated. It was not easy to understand exactly to what extent of coast the expression 'the ports within' the States mentioned was applicable. Mr. Seward said that it was intended to blockade the whole coast from Chesapeake Bay to the mouth of the Rio Grande. I observed to him that the extent of the coast between these two points was, I supposed, about 3,000 miles. Surely the United States had not a naval force sufficient to establish an effective blockade of such a length of coast. Mr. Seward, however, maintained that the whole would be blockaded, and blockaded effectively.

"I may perhaps be allowed to refer your Lordship to a clear declaration of the principles of the United States on such matters, which is contained in a note from Mr. Buchanan dated 29th December, 1846, and transmitted to the Foreign Office in Sir Richard Pakenham's despatch of the same date.

"Mr. Seward assured me that all foreign vessels already in port when the blockade should be set on foot would be allowed to come out with their cargoes. I asked whether they would be allowed to come out with cargoes shipped after the blockade was actually established. Mr. Seward did not speak positively on this point; what he said seemed to imply that the time at which the cargo was shipped would not be inquired into. I said that I supposed it was clearly understood that foreign ships coming out of blockaded ports in which there were no United States' Customs authorities would not be interfered with by a blockading squadron on the plea of their being without clearances or other papers required by the Revenue laws.

"Mr. Seward said that it was the *bonâ fide* intention of the Government to allow foreign vessels already in port when the blockade was established to depart without molestation.

"He did not say that any particular term would be fixed after the expiration of which foreign vessels would no longer be allowed to quit blockaded ports.

"He did not repeat to me the assurance he gave some time ago to one of my colleagues that vessels arriving without a knowledge of the blockade would be allowed to go into a blockaded port and come out again.

"Nor did he say anything of the intention, which he expressed to another of my colleagues, of proposing to the Legislature that the United States should adhere to the Declaration of the Congress of Paris on maritime law.

"On my pressing Mr. Seward to give me, either in writing or at all events by a formal verbal announcement, some definite information for the guidance of British merchant-vessels, he promised to send me a copy of the instructions issued to the officers of the blockading

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squadron, and said he was confident I should find them perfectly satisfactory. He was good enough to add, that if in any individual cases the rules of the blockade should bear hardly on British vessels, he should be ready to consider the equity of the matter, and to receive favourably any representations which I might make on behalf of the interests of British subjects."

The Secretary of the Navy, on being applied to, declined to furnish a copy of the Instructions, but Lord Lyons received an assurance[1] that "the blockade will be conducted as strictly according to the recognized rules of public law, and with as much liberality towards neutrals, as any blockade ever was by a belligerent."

The following note was also sent to the Spanish Minister, Señor Tassara:—

Mr. Seward to Señor Tassara.

"Sir, "*Washington, May* 2, 1861.

"In acknowledging the receipt of your note of the 30th ultimo, on the subject of the blockade of the ports in several of the States, I deem it proper to state for your further information—

"1. That the blockade will be strictly enforced upon the principles recognized by the law of nations.

"2. That armed vessels of neutral States will have the right to enter and depart from the interdicted ports.

"3. That merchant vessels in port at the time the blockade took effect, will be allowed a reasonable time for departure.

"I avail, &c.

(Signed) "W. H. Seward."

The earliest attempt to institute an effective blockade was notified as follows by the officer in command of the home squadron:—

"Proclamation.

"To all whom it may concern:

"I hereby call attention to the Proclamation of his Excellency Abraham Lincoln, President of the United States, under date of the 27th April, 1861, for an efficient blockade of the ports of Virginia and North Carolina, and warn all persons interested that I have a

[1] 4th May, 1861.

sufficient naval force there for the purpose of carrying out that Proclamation.

"All vessels passing the Capes of Virginia, coming from a distance, and ignorant of the Proclamation, will be warned off, and those passing Fortress Monroe will be required to anchor under the guns of the fort, and subject themselves to an examination.

"*United States' Flag-ship 'Cumberland,' off*
"*Fortress Monroe, Virginia, April* 30, 1861.
(Signed) "G. J. PENDERGRAST,
"Commanding Home Squadron."

This notification was irregular and invalid, and no neutral vessel entering any of the ports of Virginia and North Carolina, and knowing of the blockade by the notification alone, could have been legally condemned.[1] The ports of North Carolina were not blockaded, as we

[1] A notification that a blockade is about to be instituted, or even that a fleet has sailed for the purpose of instituting a blockade, is not equivalent to a notification of an actual blockade. Further, a notification of blockade must not be more extensive than the blockade itself. A belligerent cannot be allowed to proclaim that he has instituted a blockade of all the ports of the enemy within certain specified limits, when in truth he has only blockaded some of them. Such a course would introduce all the evils of what is termed a "paper blockade," and would be attended with the grossest injustice to the commerce of of neutrals. Accordingly, a neutral is at liberty to disregard such a notice, and is not liable to the penalties attending a breach of blockade for afterwards attempting to enter one of the ports which really are blockaded.

A striking illustration of these propositions is afforded by the Judgment pronounced by the Privy Council in the case of *Northcote* v. *Douglas* (*The Franciska*), Moore's Privy Council Cases, x, 37, from which they are in substance taken. On the 11th April, 1854, Admiral Sir C. Napier, commanding the British fleet in the Baltic, had given notice that "Her Britannic Majesty's fleet will sail this day for the Gulf of Finland, to place in a state of blockade the whole of the Russian ports of the Baltic and in the Gulfs of Finland and Bothnia;" and the British Vice-Consul at Memel had on the 17th published a notice that the Admiral "had placed the whole of the Russian ports in the East Sea in a state of blockade." In fact, however, the blockade of the coast of Courland commenced on the 17th April; that of Helsingfors and some other ports on the 26th April; that of Revel and other ports on the 20th May; and that of Cronstadt and others in the Gulf of Finland on the 26th June. A Danish vessel left Elsinore on the 14th May, intending to make for Riga (the actual blockade of which commenced on or

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shall see, till long afterwards. Of the Virginian sea-coast, however, the greater part is inclosed within Chesapeake Bay, the mouth of which is narrow and guarded by the "Capes of Virginia," as they are called—Capes Charles and Henry. Fortress Monroe faces this outlet; and immediately south of the fortress the James and Elizabeth Rivers, which drain the southern portions of the State, discharge themselves into the Bay through a passage called Hampton Roads, the narrowest part of the channel not exceeding a mile and a quarter in width. Several ships of war were generally assembled here, and the blockade of Chesapeake Bay and the James appears to have been tolerably effective from the first.

The sudden enforcement of this blockade within three days after the date of the Proclamation pressed with some severity on Northern merchants, as well as on residents within the blockaded territory. To the requests of some British merchants residing at New York and Baltimore, that they might be permitted to send ships for the removal of staves and planking purchased, paid for, and ready for delivery at Norfolk and on the James River, Mr. Seward returned a civil refusal. Established rules, he said, would not allow such a concession; and it had already been refused to American merchants who had cotton at Norfolk, which they wished to bring away in American bottoms. A

about the 17th April). It was held that she must be released, on the ground that, though Riga was blockaded, and though the master had notice of a blockade, the notice which he had was not in accordance with the facts. It was a notice of a general blockade which did not exist—"a notice which, if he had received it from a British officer, he could not, on the principles already stated, be punished for disregarding."

I need hardly add that the invalidity of the notification did not invalidate the blockade itself, where it existed *de facto*: thus it could not have been pleaded on behalf of any vessel leaving a port actually blockaded, with knowledge of the blockade, gathered from the notorious presence of the blockading ships or otherwise.

different application forwarded a few days later, in reference to a British ship, the *Hiawatha*, led to a short correspondence, to which some importance was given by the subsequent capture and condemnation of the ship:—

Lord Lyons to Mr. Seward.

"Sir, "*Washington, May* 8, 1861.

"The inclosed extracts from letters which I received yesterday from Her Majesty's Consul in Virginia will make you acquainted with a case of some hardship concerning a British vessel, the *Hiawatha*. This vessel, having come to City Point with a nominal freight in order to take on board a remunerative cargo for the voyage back, may be compelled to return home in ballast in consequence of the blockade, of which, of course, her owners could have had no knowledge when they sent her out.

"Being assured of the readiness with which the United States' Government is inclined to receive representations in favour of foreign commercial interests, I venture to submit this case for consideration, and to request an early answer respecting it.

"I have, &c.
(Signed) "LYONS."

"(Extract 1.)

"I have but two British vessels left within my Consular district, one of 445 tons and one of 63 tons, and if I could be permitted to clear them for England with cargoes partially owned on British account and indirectly wholly connected with British trade, it would remove possible complications and be but a small infraction, if any, of the laws of blockade."

"(Extract 2.)

"There are parties here about to load the British ship *Hiawatha* at City Point for Liverpool, under the impression that she will be allowed free egress by the blockading squadron. I have told persons who are here, representing the owners of the ship, that I see no difficulty to the ship leaving in ballast, but to this they will not consent, as the ship came here expressly from Liverpool at a nominal freight to load a remunerative cargo back."

Mr. Seward to Lord Lyons.

"My Lord, "*Department of State, Washington, May* 9, 1861.

"I have the honour to acknowledge the receipt of your communication of yesterday, relative to the exemption of the British vessel

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Hiawatha, now in Virginia waters, from the operation of the existing blockade of the ports of the State.

"Having submitted the matter to the Secretary of the Navy, I now have the honour to inclose to you a copy of that officer's reply, from which it will be seen that there are yet remaining five or six days for neutrals to leave.

"I have, &c.
(Signed) "WILLIAM H. SEWARD."

Mr. Welles to Mr. Seward.

"Sir, "*Navy Department, May* 9, 1861.

"I have the honour to acknowledge the receipt of your letter of yesterday, inclosing a note of Lord Lyons, relative to British vessels in Virginia waters, which it is desired to exempt from the operation of the blockade, and inquiring when the blockade of the ports of Virginia may be considered to have commenced; also 'whether the exemption asked for by Lord Lyons may with propriety be granted.'

"In answer to the inquiry, I beg leave to refer you to a copy, herewith inclosed, of the notice issued by Flag Officer Pendergrast on the 30th of April, warning all persons that he had a sufficient force to carry into effect the blockade. This notice was sent to the Baltimore and Norfolk papers, and by one or more of them published.

"Fifteen days have been specified as a limit for neutrals to leave the ports, after actual blockade has commenced, with or without cargo, and there are yet remaining five or six days for neutrals to leave. With proper diligence on the part of persons interested, I see no reason for exemption to any.

"I am, &c.
(Signed) "GIDEON WELLES."

Lord Lyons to Mr. Seward.

"Sir, "*Washington, May* 9, 1861.

"I beg to thank you for your note of this day's date relative to the case of the *Hiawatha*, a British ship now at City Point, in Virginia.

"You have done me the honour to send to me therewith a copy of a letter from the Secretary of the Navy, in which it is stated that 'fifteen days have been specified as a limit for neutrals to leave the ports after actual blockade has commenced, with or without cargo.'

"In order to avoid all possible mistake with regard to the *Hiawatha*, as well as to future cases of the same kind, I venture to request you to inform me whether I am right in concluding, from the statement just quoted, that the date of the shipment of the cargo is immaterial, and that vessels leaving the ports before the expiration of

the fifteen days will be allowed to proceed with their cargoes, whether such cargoes were shipped before or after the actual beginning of the effective blockade.

"I have, &c.
(Signed) "LYONS."

Mr. Seward to Lord Lyons.

"My Lord, "*Washington, May* 11, 1861.

"I have the honour to acknowledge the receipt of your note of the 9th instant, in which application is made for certain information regarding the blockade, and to transmit to you herewith the copy of a letter of this date from the Secretary of the Navy, to whom the matter was referred, in answer to your inquiry.

"I have, &c.
(Signed) "WILLIAM H. SEWARD."

Mr. Welles to Mr. Seward.

"Sir, "*Washington, May* 11, 1861.

"In answer to Lord Lyons's letter of the 9th instant, I have the honour to inform you that neutral vessels will be allowed fifteen days to leave port after the actual establishment of the blockade, whether such vessels are with or without cargoes.

"I have, &c.
(Signed) "GIDEON WELLES."

The rules of blockade, as commonly enforced, permit a neutral vessel which is in the port at the time when the blockade is instituted to sail in ballast or with cargo, provided the cargo has been *bonâ fide* purchased and shipped before that time, but not otherwise. Lord Lyons had certainly some reason, from Mr. Welles's ambiguous letter of the 9th (his own questions having been put with the utmost clearness), to assume that in the case of the *Hiawatha* leave would be given to load at any time within the fifteen days. The *Hiawatha* took in cargo accordingly, and by the 16th was ready for sea; she was detained for want of a steam-tug till the 18th, when she sailed, was captured on the 20th, and ultimately was condemned as prize of war. The Judge of the Admiralty Court before which she came for adjudication

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in the first instance was of opinion that Mr. Welles's letter furnished no sufficient plea for sanctioning a departure from the common rule. The Supreme Court thought otherwise,[1] but affirmed the condemnation (a minority dissenting) on the ground that the vessel did not actually get to sea until the fifteen days had expired, although her detention had been accidental.

South of the Capes and in the States bordering on the Gulf, the blockade was gradually extended during the month of May to a few of the more considerable ports.

[1] "After a careful examination of the correspondence of the State and Navy Departments, found in the record, we are not satisfied that the British Minister erred in the construction that he put upon it, which was, that a license was given to all vessels in the blockaded ports to depart with their cargoes within fifteen days after the blockade was established, whether the cargoes were taken on board before or after the notice of the blockade. All reasonable doubts should be resolved in favour of the claimants. Any other course would be inconsistent with the right administration of the law and the character of a just Government."—Black's R., ii, 675 (*Prize Cases*).

A former American Secretary of State, Mr. Marcy, had disapproved this rule:—

"In some respects I think the law of blockade is unreasonably rigorous towards neutrals, and they can fairly claim a relaxation of it. By the decisions of the English Courts of Admiralty—and ours have generally followed in their footsteps—a neutral vessel which happens to be in a blockaded port is not permitted to depart with a cargo, unless that cargo was on board at the time when the blockade was commenced or was first made known. Having visited the port in the common freedom of trade, a neutral vessel ought to be permitted to depart with a cargo without regard to the time when it was received on board."—*Mr. Marcy to Mr. Buchanan*, 13th April, 1854.

Another point of blockade law was decided in the above cases. It was contended for the owners of the *Hiawatha* that, under the terms of the Proclamation of the 19th (which, however, did not apply to the coast of Virginia), she was not liable to capture until "the Commander of one of the blockading vessels" had "duly warned" her, and "indorsed on her registert he state and fact of such warning," and she had again attempted to leave the blockaded port. The Court (four Judges dissenting) overruled this, holding that it would be absurd to require a warning where the master had actual previous knowledge. This is perfectly in accordance with English decisions, and is reasonable, though questioned by some continental jurists.

The *Niagara*, a large screw-frigate which had lately returned from Japan, appeared on the 11th May before Charleston harbour and began to warn off neutral ships.[1] She remained for four days, with her steam up, outside the bar and six or seven miles from the mouth of the harbour, and then departed altogether upon another service. From the 15th till the 28th or 29th, when the *Minnesota*, another powerful steam-frigate, arrived to replace the *Niagara*, the port continued entirely open, no ship of war showing herself in the neighbourhood. This intermission gave rise to the following correspondence:—

Lord Lyons to Mr. Seward.

"Sir, "*Washington, May* 22, 1861.

"I have the honour to inform you that it appears from reports which I have received from Her Majesty's Consul at Charleston, that a blockade of that port was declared by the United States' ship *Niagara* to have commenced on the 11th instant; that the *Niagara* remained off Charleston until the 15th instant; but that subsequently she quitted the neighbourhood, and that no United States' vessel had appeared there up to the 20th instant, the date of the latest account which has reached me.

"I take it for granted that, if a blockade of the port of Charleston be again intended, due notice of the actual commencement thereof will be given, and that the period during which neutral vessels will be allowed to depart with their cargoes will be reckoned from the date of such actual commencement.

"Trusting that you will favour me with an early acknowledgment of this note, I have, &c.

(Signed) "Lyons."

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[1] The indorsement made by the officer of the *Niagara* on the papers of the first British vessel boarded was in the following terms:—

"Boarded May 12, and ordered off the whole Southern Coast of the United States of America, it being blockaded.

"R. L. May, Lieutenant, United States' steamship *Niagara*."

The Captain afterwards told the British Consul that twenty days would be allowed for the departure of neutral ships, counted from the evening of the 10th.

Mr. Seward to Lord Lyons.

"*Department of State, Washington,*
"My Lord, *May* 27, 1861.

"I have the honour to acknowledge the receipt of your Lordship's note of the 22nd instant. Having first submitted the same to the Secretary of the Navy for the purpose of obtaining information concerning the facts which it presents, I proceed to answer it.

"The intention of the Government of the United States is to exclude all commerce, as well its own as that of foreign nations, from the ports of certain States which are in an insurrectionary condition, with a view to suppress the insurrection and establish the authority of the Federal Government.

"The equitable form of a blockade was adopted for that purpose: due notice of this purpose was given by the Proclamation of the President. The blockade as to the port of Charleston was carried into effect on the 11th day of this month, the United States' ship of war *Niagara* having taken her position there and enforced the blockade.

"The blockade of the port of Charleston has been neither abandoned, relinquished, nor remitted, as the letter of Her Britannic Majesty's Consul would lead you to infer. We are informed that the *Niagara* was replaced by the steamer *Harriet Lane*, but that, owing to some accident, the latter vessel failed to reach the station as ordered until a day or two after the *Niagara* had left.

"I forbear from discussing the effect of the absence of the blockading force upon any vessel that might have entered or departed from the port of Charleston during that brief time. Your note does not submit any such case as having actually occurred.

"I hasten, however, to express the dissent of this Government from the position which seems to be assumed by your note, that that temporary absence impairs the blockade and renders necessary a new notice of its existence. This Government holds that the blockade took effect at Charleston on the 11th day of this month, and that it will continually be in effect until notice of its relinquishment shall be given by Proclamation of the President of the United States. It is intended and expected that the blockade will be constantly and vigorously maintained. If any failure in that respect shall occur to the prejudice of any party or nation, its representations to that effect will be promptly considered.

"I avail, &c.
(Signed) "WILLIAM H. SEWARD."

Mr. Seward was mistaken. The little steamer mentioned in his letter had not shown herself at Charleston, nor indeed would it have affected the question if she had.

A blockade, once begun, does not continue until notice of its relinquishment has been given by proclamation. It continues just so long as it is maintained by the actual presence of an adequate blockading force, and no longer. The utmost that can be said is, that where there has been a regular notification, courts of justice will act on the presumption that it continues to exist until that presumption is displaced by evidence. The burthen of proof, in short, is thrown on the neutral ship-owner. But even this distinction is disapproved by continental jurists. The temporary absence of the blockading force, if it be such an absence as to remove the risk of capture, not only impairs the blockade but discontinues it, unless the absence be involuntary and caused by stress of weather. If the blockading ships be blown off by a gale, the reasonable presumption is that they will return as soon as weather permits, and the neutral trader is therefore bound by that presumption. But no such presumption arises when they are sent away on other service, nor even where, without orders, they chase to a distance from the port.[1] Nor is the neutral bound to inquire whether the intermission is due to a miscalculation on the part of the Government, or to mistake or disobedience on that of its officers, or to any accidental cause. These are matters not within his knowledge. What he knows is that the coast is clear; and, knowing that, he has a right to act on it.

After the arrival of the *Minnesota*, the blockade was maintained by from one to four ships, one steam-frigate at least usually lying off the bar between the two principal channels which afford entrance to the harbour, and another or others of inferior force cruising within signalling distance. Savannah was blockaded on the 28th May by the *Union*, a small steamer of 600 tons,

[1] The *Niagara* was understood to have been sent hastily southwards to intercept a cargo of arms which was believed to be coming from Belgium.

Ch. X. carrying five guns and thirty men, which had been chartered by the month for this service. She disappeared on the 1st June, leaving the port open, but returned on the 10th, and there was no subsequent intermission. On the 13th May a British ship was warned off from Pensacola, but told that Mobile was still open.[1] About the 26th, however, the *Powhatan* showed herself before the latter port, and the Confederate officer in command of the forts received notice from Captain Porter that the place was under blockade.

The *Powhatan* soon afterwards proceeded to the Balize, where she joined the *Brooklyn* in guarding the two principal passes through which the waters of the Mississippi find their way to the sea. Some circumstances which marked the commencement of the blockade at this place deserve to be recorded; and they cannot be told better than in the words of Mr. Mure, British Consul at New Orleans, whose report (dated 6th June) does credit to himself, as well as to the United States' officer in command:—

Consul Mure to Lord John Russell.

(Extract.) "*New Orleans, June* 6, 1861.

"I have the honour to lay before your Lordship a statement of the proceedings which I have been obliged to adopt for the purpose of protecting the interests of British merchants and ships since the announcement that the threatened blockade was established at the passes of the Mississippi river.

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[1] This vessel, the *Perthshire*, loaded a cargo of cotton at Mobile, and sailed on the 30th May. On the 9th June she was captured by the steamer *Massachusetts*, but was released on the 12th by direction of the Captain of the *Niagara*, who "considered the capture illegal, as, by order of the Department, no neutral vessel not having on board contraband of war was to be detained or captured unless attempting to leave or enter a blockaded port after the notification of blockade had been indorsed on her register." The owner made a claim for 200*l.* compensation on account of the detention of his ship, which had lost twelve days of her voyage; and the claim was allowed and paid by the Government of the United States.

"No official notice had been given of the blockade; but as the report was current, and announced in the newspapers, that two vessels of war were off the Passes, I immediately apprised the masters of the British vessels in port to lose no time in completing their cargoes, as I had been informed by Her Majesty's Minister at Washington that, after the blockade was established, the time for vessels to leave, with or without cargo, was limited to fifteen days.

"In consequence of the low stage of the water on the bar nearly thirty vessels were at this time detained, being unable to get to sea. The greater number were bound for Liverpool, and the aggregate value of their cargoes could not be less than 1,000,000*l.* sterling. It therefore became a matter of great importance to know the course which the blockading squadron would pursue towards those vessels, some of whom had left the port six weeks before the blockade.

"On the 1st current, I was informed that the Tow-Boat Company had that day ordered all their tow-boats to withdraw from the bar and return to the city, in consequence of apprehensions being entertained by them that their boats might be captured while engaged in tugging the vessels to sea. Although it appeared to me that their apprehensions were groundless, as the tow-boats ought to be considered in the light of neutrals and identified with the vessels that employed them, yet the Directors refused to permit their boats to resume operations at the bar until they received the assurance from the foreign Consuls that no attack should be made on their boats while engaged in the service of transporting vessels to sea.

"As no time was to be lost in endeavouring to remove this obstacle, it was resolved by myself and the Consuls of France and Spain to proceed at once to the Balize, and confer with the Commanders of the blockading vessels. Accordingly on the 2nd current we proceeded down the river in a boat, accompanied by the Consul for Bremen and one of the Managers of the Tow-Boat Company. We directed our course to the Pass à l'Outre, where the United States' steam-ship *Brooklyn* was at anchor, blockading that pass. Having exhibited the flags of our respective nations, we were immediately received on board, with the usual formalities. We had a long conversation with Captain Poore, who expressed a desire to take as liberal a view of his instructions as he could, consistently with the duty entrusted to him. He recommended us to visit the United States' steam-ship *Powhatan* stationed at the South-west Pass, about 28 miles distant. We arrived there late in the afternoon of the 3rd, and were received very courteously by Captain Porter, the Commander of the *Powhatan*.

"In order not to trespass on your Lordship's time, I shall merely give a *résumé* of the points discussed connected with the blockade, and the result of our conversation:—

"1. The day on which the blockade was established had been officially announced by Captain Poore, of the *Brooklyn*, on the 26th

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of May, in a letter to Major Duncan, commanding one of the forts near the mouth of the Mississippi River. Major Duncan omitted to communicate this intelligence publicly. The time when vessels could leave was therefore limited to the 10th of June. I urged that this date should be considered as applicable to vessels clearing from the port, and that some time should be allowed for them to be towed down the river and over the bar. To this suggestion both captains gave their consent, and designated the 14th current as the final day.

"2. Regarding the immunity of tow-boats from molestation while engaged in taking vessels to sea, both captains assented to my view that they were to be regarded in the light of the sails of the vessel, or as pilots; in fact, to be treated as neutrals. The Commanders stated, however, that they were well aware that some of the old tow-boats carried guns, and had become privateers, and that to them no privileges could be accorded. In order to prevent any misunderstanding upon this point, I handed them a list of the names of the boats employed by the Association.

"3. The next and last point discussed was the position of those vessels which had been detained for several weeks by the low state of water on the bar. The Commanders of the blockading vessels stated that their instructions from the Secretary of the United States' Navy did not allow them discretion to extend the time, but under the peculiar circumstances of the case, they would take the responsibility, and give some latitude to those vessels, provided efforts were made to get them off, and no partiality was shown by the Tow-Boat Company in taking over certain vessels owned in the South.

"I have thus given to your Lordship an abstract of the conversation we had with the Commanders of the blockading vessels, who readily assented to our requests. Before we left the bar to return to the city, we had the satisfaction of knowing that all the tow-boats were ordered to resume operations. Since our arrival I have been informed that twelve vessels have been towed to sea, and I hope that very few will be detained at the bar on the 14th current. I deemed it my duty to visit the squadron, in order to prevent, as far as possible, a large amount of property belonging to British subjects from being locked up for an indefinite period, and I feel assured that your Lordship will approve of the steps which I adopted to accomplish this end."

A like permission to use tow-boats had been given at Mobile, and there, as well as at Pensacola, the British ships in port got safely to sea. Galveston, in Texas, was blockaded on the 2nd June by a single ship, the *South Carolina*, which afterwards armed one of her prizes and employed her as a tender.

The *Sumter*, as we know, ran out from the Mississippi on the 30th June, and Galveston was never completely closed against vessels whose light draft enabled them to take the shallower channels across the bar. But on the whole the Gulf ports appear to have been effectively blockaded from the first. It was on the east coast, stretching from the Capes of Virginia to the southernmost point of Florida, that the disproportion of the naval force employed to the work which it was supposed to be performing was at first most palpable. Up to the 8th July hardly an armed ship was to be discovered anywhere between those two points, except at Savannah and Charleston. Wilmington and Beaufort remained perfectly open. On the 13th July, however, Commodore Pendergrast issued the following notice:—

"PROCLAMATION.

"*U.S. Flag-ship 'Roanoke,' off Charleston, July* 13, 1861.

"To all whom it may concern.

"I hereby call attention to the Proclamation of his Excellency Abraham Lincoln, President of the United States, under date of the 27th April, 1861, for an efficient blockade of the ports of Virginia and North Carolina, and warn all persons interested that I have a sufficient naval force here for the purpose of carrying out that Proclamation.

"All vessels entering the ports of North Carolina, or hovering about the coast of the same, will subject themselves to capture. Those coming from abroad and ignorant of the blockade will be warned off.

"All vessels bound to the Capes of Virginia will be allowed to proceed by having their papers endorsed, and will be allowed to enter any of the ports of Maryland.

"Fifteen days after this date the above Proclamation will be rigidly enforced against all vessels.

(Signed) "G. J. PENDERGRAST, Flag-Officer,
"Commanding West India Squadron."

The coast-line and ports south of the Fear River were not included in the terms of this notice; and, with the exception only of the main entrances to the harbours of Charleston and of Savannah, they continued unguarded,

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save by the occasional visits of ships cruising up and down. The general features which are common to a great part of this coast with that of North Carolina have been already described. Of the islands on the Georgian coast an American geographer, who wrote eighty years ago, says:—"These islands are surrounded by navigable creeks, between which and the mainland is a large extent of salt marsh fronting the whole State, not less on an average than 4 or 5 miles in breadth, intersected with creeks in various directions, admitting through the whole an inland navigation between the islands and mainland from the north-east to the south-east corners of the State. The east sides of these islands are for the most part clean, hard, sandy beaches, exposed to the wash of the ocean. Between these islands are the entrances of the rivers from the interior country, winding through the low salt marshes and delivering their waters into the sounds, which form capacious harbours of from 3 to 8 miles over, and which communicate with each other by parallel salt creeks."[1] This description, which is substantially true at the present day, explains the ease with which, notwithstanding the blockade, the coasting trade was carried on. Sailing schooners, small steamers, and other lesser craft ran safely through the interior waters, stealing out into the sea when no cruiser was in sight, and kept up frequent intercourse with the various little havens south of the Savannah river. It explains also the difficulty which was really experienced — though it has sometimes been exaggerated—in enforcing the blockade of Savannah and Charleston. To Charleston harbour there are several entrances practicable for small vessels drawing little water; against these the blockade was ineffective, but it appears both there and at Savannah to have been effective against the larger craft which could penetrate only through the main channels.

[1] *The American Geography.* By Jedidiah Morse. Second edition, p. 556.

As autumn and winter drew on, the naval force at the disposal of the Federal Government increased rapidly, and the blockade became more stringent; but there were occasional instances of laxity.

The following despatch, addressed to Lord Lyons in February 1862, expresses the views on which the British Government had up to that time acted, and afterwards continued to act:—

Earl Russell to Lord Lyons.

"My Lord, "*Foreign Office, February* 15, 1862.

"Her Majesty's Government have had under their consideration the state of the blockade of the ports of Charleston and Wilmington.

"It appears from the reports received from Her Majesty's naval officers that although a sufficient blockading force is stationed off those ports, various ships have successfully eluded the blockade; a question might therefore be raised as to whether such a blockade should be considered as effective.

"Her Majesty's Government, however, are of opinion that, assuming that the blockade is duly notified, and also that a number of ships is stationed and remains at the entrance of a port, sufficient really to prevent access to it or to create an evident danger of entering or leaving it, and that these ships do not voluntarily permit ingress or egress, the fact that various ships may have successfully escaped through it (as in the particular instances here referred to) will not of itself prevent the blockade from being an effective one by international law.

"The adequacy of the force to maintain a blockade being always, and necessarily, a matter of fact and evidence, and one as to which different opinions may be entertained, a neutral State ought to exercise the greatest caution with reference to the disregard of a *de facto* and notified blockade; and ought not to disregard it, except when it entertains a conviction, which is shared by neutrals generally having an interest in the matter, that the power of blockade is abused by a State either unable to institute or maintain it, or unwilling, from some motive or other, to do so.

"I am, &c.
(Signed) "Russell."

It is a settled rule of international law that blockades, to be binding, must be effective; that is, the number, strength, and disposition of the blockading force must be such that no ship can go in or out except at the risk—and that a serious and manifest risk—of capture. The

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reasons for this rule are, first, to restrain within definite and moderate limits a belligerent right of interference with neutral trade, which might otherwise be extended so widely as to interdict such trade altogether; secondly, in order that neutral ship-owners and captains may not be misled, to their own loss, by seeing a nominal prohibition set at nought with impunity. These objects are frustrated if there be not constantly on the spot, either at anchor or cruising to and fro, a sufficient force, sufficiently near, and acting with sufficient vigilance, to prevent ingress or egress, or at any rate to make it really hazardous: if these conditions be not satisfied, it is no blockade at all, and neutrals are entitled to disregard it, and to demand, if captures are made, the restitution of their ships and cargoes. The blockade of the southern coasts was certainly not free from irregularities, nor was it efficient at all points; it was instituted before the Government had a competent blockading force in readiness; it covered nominally more ground than the force could really occupy; and at more than one place it was intermitted and resumed without notice. The British Government was right, however, in forbearing to insist on these defects as grounds of complaint. The commencement of a blockade is seldom free from difficulties, and this had some peculiar difficulties. The Government of the United States was exerting itself to overcome them, and had every motive to exertion. Credit should be given to blockading officers for reasonable activity and vigilance, till the contrary is shown. If irregularities can be proved, recourse may be had to a Prize Court, which will decree restitution; and, unless they are manifest and long continued, or appeals to the tribunals of the belligerent be met by a plain denial of justice, the neutral Government will act wisely and properly in not taking the matter into its own hands.

CHAPTER XI.

Confederate Ships in Neutral Ports—(1) Unarmed Vessels; course pursued by Great Britain, Russia, Spain.—(2) Armed Ships; the *Sumter* visits successively Cuba, Curaçoa, Trinidad.—Remonstrances and Demands of the Government of the United States.—Answers of the Governments of Spain, the Netherlands, Great Britain.—British Orders of January 1862.—Effect of them.—The *Nashville* and *Tuscarora* at Southampton.—Rule of Twenty-four Hours.—The *Sumter* and *Iroquois* at Martinique.

Towards the end of June 1861 a merchant-vessel under the Confederate flag made her appearance in the Port of London. This was the first case of the kind, and Mr. Adams lost no time in asking what treatment she would receive, especially in respect of her clearance outwards, which he feared might be regarded as involving some recognition of the Confederate States. He was informed that according to our laws the flag which a foreign vessel might carry was not material; that the production of her papers was not required; that the master had only to state the country to which she belonged, and that "America" would be quite enough. The *Peter Marcy* had been reported inwards as "of New Orleans in America;" and a like description would be accepted on her clearance. The *Peter Marcy* therefore remained unmolested in the Victoria Dock, flying her Confederate flag.

As early as the preceding April the same question

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had been raised at St. Petersburg by the American Minister (Mr. Appleton) then residing at that Court. Prince Gortschakoff had answered that, while things continued as they were, commerce between Russia and the Confederate States would not be interrupted. As to ships clearing from Southern ports, any informality in their papers would be overlooked. They would be received as vessels belonging to the United States, but by reason of existing troubles unprovided with the usual evidence of nationality. If they chose to deny that they belonged to the United States, that would make no difference. This involved no recognition of nationality; it was a concession in aid of commerce. Regulations to this effect were subsequently issued by the Departments of Marine and Trade:—

"In case any merchant-vessels arrive in our ports belonging to the Southern States of the American Union, the same not acknowledging the authority of the Government of the United States of America, the said vessels are to be received and treated as hitherto according to the Treaty of 1832,[1] should even their ship's papers not be in order, which may occur in consequence of the present political condition of the United States of America.

"Should the crews of vessels belonging to the seceded States not wish to acknowledge the authority of Consuls appointed by the Federal Government of Washington; then, in case of dispute, they must abide by the decision of our local authorities, in the same manner as foreigners whose Governments have no representatives in our Empire."

A similar course was adopted, but not without dispute, by Spain. The Governor of Cuba having issued an order under which "vessels proceeding from and bearing the flag of the Southern Confederacy" were to be permitted to enter and clear "as vessels proceeding from a foreign nation which had no accredited Consul within this territory," Mr. Seward wrote to Mr. Schurz

[1] The Treaty of Commerce of 10th December, 1832, between Russia and the United States.

to express dissatisfaction. His Government expected, he said, that such vessels should be treated in all respects as American, and subject to the laws and consular authority of the United States. "The waiving of the irregularity of the papers in such cases is consented to *ex necessitate* and for the present time only, and is not to be drawn into precedent. But when this Government shall see fit to withdraw this concession due notice will be given to foreign Powers."[1] Señor Calderon Collantes refused to comply with this unreasonable requisition. Spain, he answered, could not oblige such vessels by force to submit to the Consular officers of the United States. Nor would he admit "that the admission of vessels without regular papers depended on a concession on the part of the Government of the United States, which might be granted or withdrawn at pleasure. The Spanish Government claimed a right to adhere to its rule of action as long as the necessity existed."[2]

These cases fairly represent the general course which nations may be expected to pursue in respect of the unarmed ships of a revolted community, whose independence has not been recognized.

Another and a more serious question arose when the armed ships of the Confederacy began to show themselves in foreign waters. The cruise of the *Sumter* carried her, as we have seen, to ports under the dominion of Spain, of the Netherlands, of Venezuela, Brazil, Great Britain, and France. Her first appearance was in the little bay of Cienfuegos on the south coast of Cuba. She arrived on the 6th July, with a train of six prizes, supplied herself with coal and water, and sailed immediately, leaving her prizes in harbour, and putting on shore their officers and crews, together with the crew of another vessel which

[1] *Mr. Seward to Mr. Schurz*, 18th September, 1861.

[2] *Mr. Schurz to Mr. Seward*, 17th October, 1861.

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she had burnt at sea. Mr. Seward was no sooner apprised of these circumstances than he addressed a demand for satisfaction to the Spanish Minister at Washington:—

"It is the duty of the Undersigned to bring this extraordinary transaction to the notice of the Spanish Government. This Government will cheerfully receive any explanation of it which the Spanish Government may feel itself at liberty to give. But in the meantime, assuming the facts to be correctly presented as they are above stated, the Undersigned is instructed by the President of the United States to inform the Spanish Government that he deems the admittance of the said piratical vessel, the *Sumter*, into the port of Cienfuegos, with the captured vessels and crews before described, her supply there with coal and water, and her permitted departure, to have been in violation of the Treaties existing between this Government and Spain, as well as of the law of nations; and this Government, in this view, will expect the immediate release and discharge of the captured vessels and their cargoes. Reserving the subject of indemnity for the injury inflicted upon the United States by the transaction, as recited, until time for explanation shall have been afforded, the Undersigned is nevertheless instructed to ask at once that Her Catholic Majesty's Government will take effective measures to prevent the recurrence of transactions in the ports of Spain of the kind now in question, which are not more injurious to the commerce of the United States than towards that of Spain herself and of all other commercial nations."[1]

Señor Tassara replied on the 9th of August:—

Señor Tassara to Mr. Seward.

(Translation.) "*Legation of Spain at Washington, Washington, August* 9, 1861.

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of Her Catholic Majesty, has the honour to bring to the knowledge of the honourable Secretary of State of the United States that, according to an official communication of the 28th of July, from the Captain-General of the Island of Cuba, the vessels belonging to citizens of the United States taken into the port of Cienfuegos by the steamer *Sumter* have been set at liberty, the examination of the case proving

[1] *Mr. Seward to Señor Tassara*, 15th July, 1861.

that they were captured in waters within the jurisdiction of the island, and under unlawful circumstances.

"I am, &c.

(Signed) "GABRIEL G. TASSARA."[1]

The published correspondence on the subject ends here.

The regulations issued by the Spanish Government were applied indifferently to ships-of-war under the Confederate flag and to those of the United States, and did not prohibit the reception of the *Sumter*.[2] They would have prevented her from disposing of her prizes even had they not been captured, as the authorities alleged, in neutral waters. Having been published on the 17th June, they could hardly have been received in Cuba when the *Sumter* arrived. We may hence observe how important it is that Governments should

[1] Three of these vessels had unquestionably been captured on the high seas. As to the other three, the *Sumter*, Captain Semmes affirmed, did not start in pursuit of them till they had gained an offing of five miles, being herself at that time close to the Cuban shore.

[2] For this Decree see Note to Chap. VI, p. 147. It may be mentioned here that the Decree, which opens with a declaration that Her Catholic Majesty had resolved to maintain the strictest neutrality in the contest begun between the Federal States of the Union and the States confederated at the South, was deemed highly satisfactory by the Government of the United States. The American Minister at Madrid wrote to Señor Calderon Collantes (31st June, 1861) in the following terms:—"Yesterday I received a despatch from the Secretary of State of the United States, informing me that the President had read with the greatest satisfaction the Proclamation of Her Catholic Majesty concerning the unfortunate troubles that have arisen in the United States, and it affords me the sincerest pleasure to express to your Excellency the high sense which the President entertains of Her Majesty's prompt decision and friendly action upon this occasion." The Spanish Minister of State, in communicating the Decree, explained that he "had avoided the use of the expression 'belligerents' as far as possible, or any other which could be considered as prejudging the question of right in any manner." We may judge of the success of Señor Calderon's efforts from the fact that the obnoxious word is applied to both parties three times in a short Decree.

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lose no time in issuing the instructions by which their officers at a distance are to be guided.[1] The *Sumter* left the Passes of the Mississippi on the 30th of June, having waited twelve days for an opportunity; and she would have been at sea two months before, could she have been got ready by that time. As it was, she probably reached Cuba before the authorities had been instructed how to deal with her.

On the evening of the 15th July this troublesome visitor hove in sight of the Dutch port of St. Anne's, Curaçoa, fired a gun for a pilot, and hoisted the Confederate flag. The Governor, in obedience to his orders,[2] refused to permit her to enter until assured that she was not a privateer; she therefore lay outside till morning, when Captain Semmes sent one of his officers ashore with a written declaration that the *Sumter* was a ship-of-war duly commissioned by the Government of the Confederate States, asking at the same time leave to come into port for a few days. The Governor—after consulting his Council, who were unanimously of opinion that the word of the commanding officer was sufficient—granted the required permission. The *Sumter* came in, coaled, and put to sea on the 24th.

Upon this state of facts Mr. Seward wrote as follows to the American Minister at the Hague:—

[1] The general rule, in the absence of any specific regulations, is thus stated by Halleck: "Armed cruisers may anchor within a neutral port as a shelter from the attacks of an enemy, to avoid the dangers of a storm, or to supply themselves with water, provisions, and other articles of pressing necessity. Asylum to this extent is required by the common law of humanity to be afforded to belligerent vessels in neutral ports. While a neutral State may by proclamation or otherwise prohibit belligerent vessels with prizes or prisoners of war from entering its ports, the absence of any such prohibition implies the right to enter, and any vessel so entering neutral waters retains her right of exterritoriality both with respect to her prisoners of war and her prizes."—*Halleck*, pp. 522, 523.

[2] See Note to Chap. VI, p. 146.

"You are instructed to bring this matter immediately to the notice of the Government of the Netherlands. The subject of damages for so great a violation of the rights of the United States will be considered when we shall have properly verified the facts of the case. In the meantime you will ask the Government of the Netherlands for any explanation of the transaction it may be able or see fit to give. You will further say that the United States, if the case thus stated shall prove to be correct, will expect, in view of the Treaties existing between the two countries and the principles of the law of nations, as well as upon the ground of assurances recently received from the Governor of the Netherlands, that it will disown the action of its authorities at Curaçoa, and will adopt efficient means to prevent a recurrence of such proceedings hereafter. If the case thus presented shall not be found entirely erroneous, or be very essentially modified, the United States will expect that the Governor of the Island of Curaçoa will be promptly made to feel the severe displeasure of the Government of the Netherlands, a country with which we have lived on terms of unbroken friendship for three-quarters of a century."[1]

To this demand, as peremptory in tone as it was unreasonable in substance, the Dutch Government, through its Minister of Foreign Affairs, returned a spirited and elaborate reply, which merits, notwithstanding its length, to be placed on record.[2] Baron

[1] *Mr. Seward to Mr. Pike*, 15th August, 1861.

[2] *Baron Van Zuylen to Mr. Pike.*
(*From the Papers relating to Foreign Affairs laid before the Congress of the United States, December* 1861.)
(Translation.)
"Sir, "*The Hague, September* 17, 1861.

"The Department of the Colonies has just communicated to me the information, transmitted by the Governor of Curaçoa, concerning the affair of the ship *Sumter*, and I hasten to bring to your notice the following observations, by way of sequence to the preliminary reply which I had the honour to address to you on the 2nd of this month. According to the principles of the law of nations, all nations without exception may admit vessels of war belonging to a belligerent State to their ports, and accord to them all the favours which constitute an asylum. Conditions are imposed on the said vessels during their stay in the ports or roadsteads. For example, they must keep perfect peace with all vessels that may be there; they may not augment their crews, nor the number of their guns, nor be on the look out in the ports or roadsteads for the purpose of watching after hostile vessels arriving or departing, &c. Besides, every State has the right to interdict foreign vessels of war from entrance to ports which are purely military. Thus

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Van Zuylen de Nyevelt answered that the *Sumter* was not a privateer; that the rights of war could not

it was that Sweden and Denmark, in 1854, at the time of the Crimean war, reserved the right to exclude vessels of war from such or such ports of their dominions.

"The neutral Power has also the right to act like France, who, by her declaration of neutrality in the war between the United States and the Confederate States, under date of 9th June last (*Moniteur* of 11th June), does not permit any vessel of war, or privateer of one or the other of the belligerents to enter and remain with their prizes in French ports longer than twenty-four hours, unless in case of refuge under stress.

"In the proclamation of the month of June last, which was communicated to you with my despatch of the 13th, the Government of the Netherlands has not excluded vessels of war from her ports.

"As to privateers, the greatest number of the maritime nations allows them the privilege of asylum upon the same conditions nearly as to vessels of war.

"According to a highly esteemed author on the law of nations (Hautefeuille, *Droits et Devoirs des Nations Neutres*, vol. i, p. 139), privateers may claim entrance into the ports of nations which have consented to accord asylum to them, not only in cases of pressing dangers, but even in cases in which they may deem it advantageous, or even only agreeable, and for obtaining rest or articles of secondary necessity, such as the refreshments they may have need of.

"The terms of the proclamation of the Netherlands Government, which admits privateers into Netherlands ports only in case of distress, harmonize with this doctrine.

"Moreover, according to the information received from the Governor of Curaçoa, the *Sumter* was actually in distress, and that functionary could not, therefore, refuse to allow the said vessel to enter the port.

"Strong in its amicable intentions, the King's Government does not believe itself bound to confine itself to the defence of the conduct of one of its agents in the particular case under discussion. It is not ignorant that it can or may hereafter be a contested question in such cases as to the reality of the distress in which such vessel or another would be, and that thus the subject of the admission generally of the Confederate States' vessels would rest untouched. I therefore, Sir, think it opportune to look into the question, to determine whether the *Sumter* should have been admitted at Curaçoa without the condition of well-assured distress.

"It is evident that the reply to be made is dependent on another question—that is to say, Was this vessel a man-of-war or a privateer?

be denied to the Confederate States; that his Court had determined to preserve, in the pending struggle, a

"In the latter case, the Netherlands Government could not, except in case of a putting-in compelled by distress (*relâche forcée*), admit the *Sumter* into the ports of its territories.

"It is not sufficient to dispose of the difficulty by the declaration that the *Sumter* is, as is stated in your despatches, 'a vessel fitted out for, and actually engaged in, piratical expeditions,' or 'a privateer steamer.' Such an assertion should be clearly proved, in accordance with the rule of law, '*affirmanti incumbit probatio.*'

"After having poised, with all the attention which comports with the weightiness of the matter, the facts and circumstances which characterize the dissensions which are now laying desolate the United States, and of which no Government more desires the prompt termination than does that of the Netherlands, I think I may express the conviction that the *Sumter* is not a privateer, but a man-of-war—grounding myself on the following considerations:—

"In the first place, the declaration of the commander of the vessel given in writing to the Governor of Curaçoa, who had made known that he would not allow a privateer to come into the port, and had then demanded explanations as to the character of the vessel. This declaration purported to state that 'the *Sumter* is a ship-of-war duly commissioned by the Government of the Confederate States.'

"The Netherlands Governor had to be contented with the word of the commander couched in writing. M. Ortolan (*Diplomatie de la Mer*, vol. i, p. 217), in speaking of the evidence of nationality of vessels of war, thus expresses himself:—

"'The flag and the pennant are visible indications, but we are not bound to give faith to them until they are sustained by a cannon shot.'

"The attestation of the commander may be exigible, but other proofs must be presumed; and whether on the high seas or elsewhere, no foreign power has the right to obtain the exhibition of them.

"Therefore the Colonial Council has unanimously concluded that the word of the commanding officer was sufficient.

"In the second place, the vessel armed for war by private persons is called 'privateer.' The character of such vessel is settled precisely, and, like the English name (privateer), indicates sufficiently under this circumstance that she is a private armed vessel—the name which Mr. Wheaton gives them.—*Elements of International Law*, vol. ii, p. 19.

"Privateering is the maritime warfare which privateers are authorized to make, for their own account, against merchant-vessels of the enemy by virtue of letters of marque which are issued to them by the State.

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perfect and absolute neutrality; and that it would be inconsistent with this to admit the ships of one belligerent

"The *Sumter* is not a private vessel; is not the private property of unconnected individuals—of private ship-owners. She, therefore, cannot be a 'privateer;' she can only be a ship-of-war or ship of the State armed for cruising. Thus the *Sumter* is designated, in the extract annexed from *Harper's Weekly*, under the name of 'rebel ship-of-war.'

"Thirdly. It cannot be held, as you propose in your despatch of the 9th of this month, that all vessels carrying the Confederate flag are, without distinction, to be considered as privateers, because the principles of the law of nations, as well as the examples of history, require that the rights of war be accorded to those States.

"The Government of the United States holds that it should consider the States of the South as rebels.

"It does not pertain to the King's Government to pronounce upon the subject of a question which is entirely within the domain of the internal regulation of the United States; neither has it to inquire whether, in virtue of the Constitution which rules that Republic, the States of the South can separate from the Central Government, and whether they ought then, aye or no, to be reputed as rebels during the first period of the difficulties.

"But I deem it my duty to observe to you, Sir, that according to the doctrines of the best publicists, such as Vattel, lib. iii, cap. 18, sec. 292, and M. de Rayneval, *Droits de la Nature et des Gens*, vol. i, p. 161, there is a notable difference between rebellion and civil war. 'When,' says Vattel, 'a party is formed in the State, which no longer obeys its Sovereign, and is strong enough to make head against him, or in a Republic, when the nation divides into two opposing parties, and on one side and the other take up arms, then it is a civil war.' It is, therefore, the latter which now agitates the great American Republic.

"But, in this case, the rights of war must be accorded to the two parties.

"Let me be allowed to cite here only two passages; the one from Vattel (lib. ii, cap. 4, sec. 56), which reads: 'Whenever affairs reach to civil war the ties of political association are broken, or at least suspended, between the Sovereign and his people. They may be considered as two distinct Powers; and, since one and the other are independent of any foreign authority, no one has the right to judge between them. Each of them may be right. It follows, then, that the two parties may act as having equal right.' The other passage is taken from the work of a former minister, himself belonging to the United States, Mr. Wheaton, who, in his *Elements of International Law*, chap. i, p. 35 (Am. ed., part 1, p. 32), thus expresses himself: 'If the foreign State would observe

and exclude those of the other. He reminded Mr. Seward that the United Provinces had in 1779 refused, on the

absolute neutrality in face of the dissensions which disturb another State, it must accord to both belligerent parties all the rights which war accords to public enemies, such as the right of blockade, and the right of intercepting merchandize contraband of war.'

"As for historic evidence, it will suffice to call to mind from ancient times the struggle of the United Provinces with Spain, and from modern date the war between the Hispano-American Colonies and the mother country since 1810, the war of independence of Greece from Turkey since 1821, &c.

"It will doubtless be useless to recollect [unnecessary to remind you?], on this occasion, that the principle to see only insurgents in the States of the South having neither sovereignty nor rights of war, nor of peace, was put forward by England, at the breaking out of the War of Independence of the Anglo-American Colonies, in the vindicatory memoir published by the British Court in 1778 in answer to the exposition of the motives for the conduct of France, which had lately signed, on the 6th day of February of that year, a Treaty with the United States, in which they were regarded as an independent nation.

"But the Court of Versailles set out from other principles, which she developed in 'Observations on the Vindicatory Memoir of the Court of London,' saying, among other things: 'It is sufficient to the justification of his Majesty that the Colonies had established their independence not merely by a solemn declaration, but also in fact, and had maintained it against the efforts of the mother-country.'

"Existing circumstances seem to present the same characteristics: and if it is desired to treat the States of the South as rebels, and accuse them of felony, there might here be cited as applicable to the actual conduct of the United States towards the Confederates the following remark of the Court of Versailles: 'In advancing this proposition (that the possession of independence, of which the French cabinet said the Americans were in the enjoyment in 1778, was a veritable felony), the English Minister had, without doubt, forgotten the course he had himself taken towards the Americans from the publication of the Declaration of Independence. It is remembered that the creatures of the Court constantly called upon the rebellion vengeance and destruction. However, notwithstandiug all their clamours, the English Minister abstained, after the Declaration of Independence, from prosecuting the Americans as rebels; he observed, and still observes towards them, the rules of war usual among independent nations. American prisoners have been exchanged through cartels,' &c.

"The rights of war cannot, then, in the opinion of the King's Government, be refused to the Confederate States; but I hasten to add

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demand of England, to release the prizes which had been carried into the Texel by Paul Jones, and that the English

that the recognition of these rights does not import in favour of such States recognition of their sovereignty.

"'Foreign nations,' says M. Martens (*Précis du Droit des Gens*, lib. viii, cap. 3, sec. 264), 'cannot refuse to consider as lawful enemies those who are empowered by their actual government, whatever that may be. *This is not recognition of its legitimacy.*'

"This last recognition can only spring from express and official declaration, which no one of the cabinets of Europe has thus far made.

"Finally, and in the last place, I permit myself here to cite the example of the American privateer, *Paul Jones (sic)*.

"This vessel, considered as a pirate by England, had captured two of His Britannic Majesty's ships in October 1779. She took them into the Texel, and remained there more than two months, notwithstanding the representations of Mr. Yorke, Ambassador of Great Britain at the Hague, who considered the asylum accorded to such privateer (pirate as he called it in his memoir to the States-General of 21st March, 1780) as directly contrary to Treaties, and even to the ordinances of the Government of the Republic.

"Mr. Yorke demanded that the English vessels should be released.

"The States-General refused the restitution of the prizes.

"The United States, whose belligerent rights were not recognized by England, enjoyed at that period the same treatment in the ports of the Republic of the United Provinces as the Netherlands authorities have now accorded to the Confederated States.

"If the Cabinet of the Hague cannot, therefore, by force of the preceding, class all the vessels of the Confederated States armed for war in the category of privateers, much less can it treat them as pirates (as you call them in your despatch of the 12th of this month), or consider the *Sumter* as engaged in a filibustering expedition—'engaged in a piratical expedition against the commerce of the United States'—as it reads in your communication of the 2nd of September.

"Here again historic antecedents militate in favour of the opinion of the Netherlands Government.

"Is there need, in fact, to remind you that at the outset of the War of American Independence in 1778, the English refused to recognize American privateers as lawful enemies, under the pretence that the letters of marque which they bore did not emanate from the Sovereign, but from revolted subjects?

"But Great Britain soon had to desist from this pretension, and to accord international treatment to the colonists in arms against the mother-country.

"The frankness with which the King's Government has expressed

Minister then resident at the Hague had insisted that Jones was a pirate for exactly the same reasons for which

its convictions in relation to the course to be taken towards the States of the South will, without doubt, be estimated at its just value by the Government of the United States.

"It will perceive therein the well-settled intention to preserve in safety the rights of neutrality; to lay down for itself and to follow a line of conduct equally distant from feebleness as from too great adventurousness, but suitable for maintaining intact the dignity of the State.

"The Government of the Netherlands desires to observe, on the occasion of existing affairs in America, a perfect and absolute neutrality, and to abstain therefore from the slightest act of partiality.

"According to Hubner (*Saisie de Bâtiments Neutres*), 'neutrality consists in absolute inaction relative to war, and in exact and perfect impartiality manifested by facts in regard to the belligerents, as far as this impartiality has relation to the war, and to the direct and immediate measures of its prosecution.'

"'Neutrality,' says Azuni (*Droits Maritimes*), 'is the continuation in a state of peace of a power which, when war is kindled between two or more nations, absolutely abstains from taking any part in the contest.'

"But if the proposition be admitted that all the vessels of the Confederate States armed for war should be considered *primâ facie* as privateers, would there not be a flagrant inequality between the treatment and the favours accorded to vessels of war of the United States and the vessels of the Confederate States, which have not for the moment a navy properly so called?

"This evidently would be giving proof of partiality incompatible with real duties of neutrality. The only question is to determine with exactitude the distinctive characteristics between a privateer and a ship-of-war, although this may be difficult of execution. Thus is ignored that which Count Reventlow, Envoy of the King of Denmark at Madrid, drew attention to in 1782, that there exists among the maritime powers regulations or conventions between sovereigns, which oblige them to equip their vessels in a certain manner, that they may be held veritably armed for war.

"You express also, in your despatch of September 2, the hope that the Netherlands Government will do justice to your reclamation, grounding yourself on the tenor of Treaties existing between the Netherlands and the United States, on the principles of the law of nations, and, finally, upon the assurances you have received from the King's Government.

"Amidst all the European powers there are few who have better defended the rights of neutrals, and have suffered more in this noble

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the same description was now applied to Semmes. "The United States, whose belligerent rights were not then

cause than Denmark; and one of her greatest statesmen of the close of the last century, Count Bernstorff, has been able to declare with justice, in his memoir of July 28, 1793, a document that will long continue to be celebrated, 'a neutral power fulfils all its duties by never departing from the most strict impartiality, nor from the avowed meaning of its Treaties.'

"I have endeavoured, Sir, to show, in what precedes, that the Government of the Netherlands has fulfilled conscientiously its first duty, and will adhere faithfully thereto.

"The Cabinet of the Hague does not observe, and will not observe, less religiously the tenor of Treaties.

"The Treaty of the 19th of January, 1839, and the additional Convention of the 26th of August, 1852, only relate to commerce and navigation; the only Treaties that can be invoked in the present case are those of the 8th of October, 1782.

"I do not think it my duty to enter here upon a discussion of principles on the question of deciding whether these Treaties can still be considered as actually in force, and I will not take advantage of the circumstance that the Cabinet of Washington has implicitly recognized, by the very reclamation which is the object of your despatches, that the Treaties of 1782 cannot any longer be invoked as the basis of international relations between the Netherlands and the United States.

"I will only take the liberty of observing to you, Sir, that the execution of the stipulations included in those diplomatic acts would be far, in the present circumstances, from being favourable to the Government of the Republic.

"In fact, we should, in this case, admit to our ports privateers with their prizes, which could even be sold there by virtue of Article 5 of the before-cited Convention of 1782, on rescues.

"It would, perhaps, be objected that the Treaty of 1782, having been concluded with the United States of America, could not be invoked by a part of the Union which had seceded from the central Government, and I do not dissent from the opinion that this thorny question of public law would give rise, should the case occur, to very serious difficulties.

"But we cannot lose sight of the fact that the Treaty spoken of was concluded, even before the recognition of the United States by England, in 1783, with the oldest members of the Republic, among others, to wit, with Virginia, North Carolina, South Carolina, and Georgia, and that those States actually figure among the Secessionists.

"In 1782 the Republic of North America was only a simple con-

recognized by England, enjoyed at that time the same treatment in the ports of the Republic of the United

federation of States, remaining sovereign, united only for common defence (*Staatenbund*); and it is only since the establishment of the Constitution of the 17th of September, 1787, that the pact which binds together the United States received the character which is attributed to it by Mr. Wheaton also (*Elements of International Law*) of a perfect union between all the members as one people under one Government, federal and supreme (*Bundestaat*)—'a commonwealth,' according to Mr. Motley in his pamphlet *Causes of the Civil War in America*, p. 71.

"In view of this fundamental difference between the present character of the Government of the United States and that of the party contracting the Treaty of 1782, it would be difficult to refuse in equity the privilege of the Secessionist States to avail themselves of it.

"It will, therefore, not escape your penetration that it is preferable, as well for the Netherlands as for the Cabinet of Washington, to leave the Treaty above mentioned at rest, and that, in excluding privateers from its ports, the Government of the Netherlands has acted only in the interests of the Government of the United States, to which it is bound by feelings of a friendship which dates even from the time of the existence of the Republic of the United Provinces, and which the King's Government will make every effort to maintain and consolidate more and more.

"According to the Law of Nations, the cases in which the neutrality of a power is more advantageous to one party than to the other do not affect or impair it; it suffices that the neutrality be perfect and strictly observed. The Government of the Netherlands has not departed from it, therefore, in denying admission to the ports of His Majesty's territories to privateers, although at first glance this determination is unfavourable to the Southern States.

"The difficulties which have actually arisen, and which may be renewed hereafter, the desire to avoid as much as possible everything that could compromise the good understanding between the Governments of the United States and the Netherlands, impose on the latter the obligation to examine with scrupulous attention if the maintenance of the general principles which I have had the honour to develope might not in some particular cases impair the attitude of neutrality which the Cabinet of the Hague desires to observe. If, for example, we had room to believe that the *Sumter*, or any other vessel of one of the two belligerent parties, sought to make of Curaçoa, or any other port in His Majesty's dominions, the base of operations against the commerce of the adverse party, the Government of the Netherlands would be the first to perceive that such acts would be a real infraction, not

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Provinces as the authorities of the Netherlands have now accorded to the Confederate States." He added that, should there be reason to believe that the *Sumter*, or any vessel of either belligerent, sought to make Curaçoa, or any other Dutch port, a base of operations against the commerce of the adverse party, the Government would take measures to prevent such an infringement, not only of neutrality, but of its own rights of sovereignty over the territorial waters of the State, and that instructions on this point would be sent to the Colonial authorities. A month afterwards, on the arrival of news that the *Sumter* had put in and coaled at Paramaribo, further orders were sent out, applicable, as the previous orders had been, to the ships of both belligerents alike. They were not to be permitted to provide themselves with more coal than would be enough for a run of twenty-four hours, and their stay in port was to be limited to twice twenty-four.[1]

To the despatch of the 17th September Mr. Seward rejoined by reiterating that the United States "unreservedly claimed to determine for themselves absolutely the character of the *Sumter;*" that they would not debate the point; and that they were determined "to make it

merely of the neutrality we wish to observe, but also of the right of sovereignty over the territorial seas of the State; the duty of a neutral State being to take care that vessels of the belligerent parties commit no act of hostility within the limits of its territory, and do not keep watch in the ports of its dominion to course from them after vessels of the adverse party.

"Instructions on this point will be addressed to the Governors of the Netherlands colonial possessions.

"I flatter myself that the preceding explanations will suffice to convince the Federal Government of the unchangeable desire of that of the Netherlands to maintain a strict neutrality, and will cause the disappearance of the slightest trace of misunderstanding between the Cabinets of the Hague and of Washington.

"Accept, &c.,

(Signed) "De Zuylen de Nyevelt."

[1] *Baron Van Zuylen to Mr. Pike*, 15th October, 1861.

sure that henceforth any piratical vessel fitted out by or under the agency of disloyal American citizens, and cruising in pursuit of vessels of the United States, shall not be admitted into either the continental or the colonial ports of the Netherlands under any pretext whatever. If that assurance cannot be obtained in that way, we must provide for the protection of our rights in some other way."[1] The Dutch Government was not moved by this threat, nor did the American Government attempt to enforce it, and the correspondence closed with a despatch in which Mr. Seward professed to find the instructions of October practically satisfactory.

On the arrival of the *Sumter* at Trinidad, it became the turn of Great Britain to answer complaints similar in substance, though couched in different language:—

Mr. Adams to Earl Russell.

"*Legation of the United States, London, September* 30, 1861.

"The Undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States, regrets to be obliged to inform the Right Honourable Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, that he has been instructed by the President of the United States to prefer a complaint against the authorities of the Island of Trinidad for a violation of Her Majesty's Proclamation of Neutrality by giving aid and encouragement to the insurgents of the United States.

"It appears by an extract from a letter received at the Department of State from a gentleman believed to be worthy of credit, a resident of Trinidad, Mr. Francis Bernard, a copy of which is submitted herewith, that a steam-vessel known as an armed insurgent privateer, called the *Sumter*, was received on the 30th of July last at that port, and was permitted to remain for six days, during which time she was not only furnished with all necessary supplies for the continuance of her cruise under the sanction of the Attorney-General, but that Her Majesty's flag was actually hoisted on the Government flag-staff in acknowledgment of her arrival.

"The Undersigned has been directed by his Government to bring this extraordinary proceeding to the attention of Lord Russell, and in case it shall not be satisfactorily explained, to ask for the adoption of such measures as shall insure, on the part of the authorities of the

[1] *Mr. Seward to Mr. Pike*, 17th October, 1861.

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said island, the prevention of all occurrences of the kind during the continuance of the difficulties in America.

"The Undersigned deems it proper to add, in explanation of the absence of any official representation from Trinidad to substantiate the present complaint, that there was no Consul of the United States there at the time of the arrival of the vessel. The Undersigned had the honour, a few days since, to apprise Lord Russell of the fact that this deficiency had been since supplied by preferring an application for Her Majesty's *exequatur* for a new Consul, who is already on his way to occupy his post.

"The Undersigned, &c.

(Signed) "CHARLES FRANCIS ADAMS."

Earl Russell to Mr. Adams.

"*Foreign Office, October* 4, 1861.

"The Undersigned has had the honour to receive a complaint from Mr. Adams against the authorities of the Island of Trinidad for a violation of Her Majesty's Proclamation of Neutrality, by giving aid and encouragement to the insurgents of the United States.

"It appears, from the accounts received at the Colonial Office and at the Admiralty, that a vessel bearing a Secession flag entered the port of Trinidad on the 30th of July last.

"Captain Hillyar, of Her Majesty's ship *Cadmus*, having sent a boat to ascertain her nationality, the commanding officer showed a commission signed by Mr. Jefferson Davis, calling himself the President of the so-styled Confederate States.

"The *Sumter*, which was the vessel in question, was allowed to stay six days in Trinidad, and to supply herself with coals and provisions, and the Attorney-General of the Island perceived no illegality in these proceedings.

"The Law Officers of the Crown have reported that the conduct of the Governor was in conformity to Her Majesty's Proclamation.

"No mention is made by the Governor of his hoisting the British flag on the Government flag-staff, and if he did so, it was probably in order to show the national character of the island, and not in acknowledgment of the arrival of the *Sumter*.

"There does not appear, therefore, any reason to believe that Her Majesty's Proclamation of Neutrality has been violated by the Governor of Trinidad or by the commanding officer of Her Majesty's ship *Cadmus*.

"The Undersigned, &c.

(Signed) "RUSSELL."

In a subsequent conversation with Lord Lyons, Mr. Seward said "that France and, he thought, all the other Powers of Europe, refused to allow privateers to

remain for more than twenty-four hours in their ports.[1] He could hardly conceive that England wished to stand alone as the only Power which admitted the enemies of the United States without restriction into its harbours. He supposed that the matter could hardly have presented itself in this light to Her Majesty's Government." "I observed," proceeds Lord Lyons, "to Mr. Seward, that I supposed that in this matter each Power had looked back to precedents, and taken the course which had been usual with it on similar occasions in former times. In one point the English rule was, I said, more stringent than that of France and many other Powers, for armed vessels were not allowed to carry their prizes into British ports for any time, however short. Mr. Seward did not pursue the conversation; he merely said that he had wished to mention the matter to me in the hope that I might do something towards getting it satisfactorily settled."[2] A few days afterwards the conversation was renewed, and the American Secretary of State, in Lord Lyons's words, "seemed to wish now to be understood as requesting me positively to suggest to Her Majesty's Government to adopt the rule which had, he said, been adopted by all the other Powers of Europe. He seemed to desire to make the suggestion through me rather than in a more formal manner through the United States' Minister in London."[3]

The Orders of January 1862 complied, as we have seen, in this respect with the desire of the American Government.[4] These Orders required every ship-of-war

[1] This is not a correct statement of the French regulation. It ran thus:—

"Il ne sera permis *à aucun navire de guerre ou corsaire* de l'un ou de l'autre des belligérants d'entrer et de séjourner *avec des prises* dans nos ports ou rades pendant plus de vingt-quatre heures, hors le cas de relâche forcée."

[2] *Lord Lyons to Earl Russell*, 4th November, 1861.

[3] *The same to the same*, 9th November, 1861.

[4] See Note to Chap. VI, p. 137.

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or privateer of either belligerent which should enter British waters to depart within twenty-four hours afterwards, except in case of stress of weather or of her requiring provisions, or things necessary for the subsistence of her crew, or repairs. In either of these cases she was to put to sea as soon after the expiration of the twenty-four hours as possible, taking in no supplies beyond what might be necessary for immediate use, and no more coal than would carry her to the nearest port of her own country, or some nearer destination. Nor, after coaling once in British waters, was she to be suffered to coal again within three months unless by special permission.

The pressure of these Orders, it need hardly be said, bore chiefly on the handful of cruisers which roved about under the Confederate flag. Cut off from returning, except at great risk, to any port of their own, and tracked from place to place by Federal ships of heavier metal and superior force, it was to them of vital consequence to be able to keep the sea as long as possible, while their comparatively small dimensions allowed them little stowage for fuel. The Federal cruiser, on the other hand, able to go where she pleased, and sure in due time to be relieved from home, felt the restraints but little. It is not to be supposed, however, that these considerations had weight with the British Government, nor could they have been urged by way of objection to the Orders themselves. It is the right of the neutral, remaining at peace, to shut out war altogether from his own shores and his own waters, to repel its first approaches, no matter in what shape it may come or under what insidious disguise, and to prohibit belligerent ships from making his ports and roadsteads a station whence they may watch for and attack the enemy. It is his right to make, for that purpose, any regulations he thinks fit, provided he applies them to both belligerents alike. It is not for him, as I have before observed, to handicap, as it were, by any regulations of his own, belligerents

between whom there is a disparity of force; nor is he under any obligation at all to refrain from enforcing a prohibition which he judges convenient, because its incidence will be made unequal by their inequality of strength or circumstances. If a long cruise at the present day require repeated supplies of coal, it must be remembered that to assist either party to maintain a long cruise is not the business of the neutral.

This general right to keep neutral territory inviolate was called into action towards the close of the year by the arrival at Southampton of a Confederate armed ship (the only one that ever entered a port within the United Kingdom, unless to be dismantled or surrendered), speedily followed by a Federal cruiser. The *Nashville*, a large paddle-wheel steamer formerly engaged on the New York and Charleston line, had been designed to carry the Confederate agents to Europe—a service which, as it turned out, she would have performed successfully; but she drew too much water, it was thought, to be relied on for running the blockade, and they were accordingly transferred to the *Theodora*, and sent by the West India route—with what consequences we have already seen. The *Nashville*, lightened to diminish her draught, armed with two guns and commanded by an officer who had served with some distinction in the Federal navy, slipped out from Charleston on the night of the 26th October, unseen, although it was moonlight, by the blockading ships, but nearly grounding on the bar. She touched at Bermuda, coaled there,[1] and arrived at Southampton on the 21st November, having captured and burnt an American merchantman near the entrance of the Channel.[2]

[1] Coal from the Government stores was refused. The Duke of Newcastle, referring to this in a despatch to the Governor of Bermuda, wrote: "I have further to state that both you and Captain Hutton showed a very proper discretion in declining to furnish supplies to a war-vessel of one of the belligerent parties from public stores belonging to the British Government."

[2] The master and crew of the ship thus destroyed, the *Harvey*

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Orders were immediately despatched that she should not be allowed to add to her equipment for war, and that if any attempt were made to do so, proceedings should be taken under the Foreign Enlistment Act; and Lord Russell received from Mr. Adams on the 23rd an application, the purport of which is sufficiently stated in the following answer:—

Earl Russell to Mr. Adams.

"*Foreign Office, November* 28, 1861.

"The Undersigned, Her Majesty's Principal Secretary of State for Foreign Affairs, has the honour to inform Mr. Adams, Envoy Extraordinary and Minister Plenipotentiary of the United States at this Court, that his note of the 22nd instant has been the subject of careful and anxious consideration by Her Majesty's Government.

"Mr. Adams, after reciting the capture and destruction by fire of a United States' merchant-ship on the high seas by order of the Commander of the armed steamer called the *Nashville*, and the subsequent arrival of the *Nashville* in the port of Southampton, asks for an inquiry as to two classes of facts: the first, 'as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly Power and then to claim a refuge in the harbours of Great Britain;' the second, 'in case the nature of that authority be deemed sufficient, at least in the view of Her Majesty's Government, as to the purposes for which the ship is alleged to have come across the ocean, to wit, the making more effective preparations in the ports of Great Britain for carrying on war against the people of a friendly nation.'

Birch, were brought on board the *Nashville* to Southampton, and there set at liberty. An application was shortly afterwards made to the borough magistrates on behalf of the master, who alleged that his chronometer and ship's papers had been taken from him by the Commander of the *Nashville*, for a summons or warrant to be served on the latter, calling upon him to show cause, "by production of the authority under which he acts or otherwise," why he should not deliver up these articles of property. The magistrates were of opinion that they had no power to issue such a summons. The solicitors for the master then applied to the Foreign Office, but received the answer that the Secretary of State "had no jurisdiction or power to give authority to the magistrates either to issue any summons or warrant, or to do, or abstain from doing, anything in relation to the matter in question."—*Mr. Layard to Messrs. Oliverson, Lavie, and Peachey*, 27th November, 1861.

"Her Majesty's Government have directed their inquiries to both these points, and also to the state of the law as applicable to the facts thus by them ascertained.

"With regard to the first point, the Undersigned has to state that the *Nashville* appears to be a Confederate vessel-of-war; her Commander and officers have commissions in the so-styled Confederate Navy; some of them have written orders from the Navy Department at Richmond to report to Lieutenant Peagram 'for duty' on board the *Nashville;* and her crew have signed articles to ship in the Confederate Navy.

"In these circumstances the act done by the *Nashville*, of capturing and burning on the high seas a merchant-vessel of the United States, cannot be considered as an act 'voluntarily undertaken by individuals not vested with powers generally acknowledged to be necessary to justify aggressive warfare,' nor does it at all 'approximate within the definition of piracy.'

"Such being the answer of Her Majesty's Government on the first point raised by Mr. Adams, the Undersigned passes to the second.

"The Undersigned stated to Mr. Adams, in his informal note of the 23rd instant, that he had already given directions that no infringement of the Foreign Enlistment Act should be permitted in regard to the *Nashville*. In fact, directions had already been given to prevent the *Nashville* from augmenting her warlike force within Her Majesty's jurisdiction in contravention of the Foreign Enlistment Act.

"With respect to the allegation made by Mr. Adams, that some of the officers of the *Nashville* are to be put in command of vessels now fitting out in British ports for purposes hostile to the Government of the United States, the Undersigned can only say that, if reasonable evidence can be procured to that effect, all parties concerned who shall be acting in contravention of the Foreign Enlistment Act shall be legally proceeded against, with a view to the punishment of the persons and to the forfeiture of the vessels.

"Having thus answered Mr. Adams upon the two points to which his attention was called, the Undersigned has only further to say that, if, in order to maintain inviolate the neutral character which Her Majesty has assumed, Her Majesty's Government should find it necessary to adopt further measures, within the limits of public law, Her Majesty will be advised to adopt such measures.

"It is the earnest desire of Her Majesty to preserve intact the friendly relations between Her Majesty and the United States of America.

"The Undersigned, &c. (Signed) "RUSSELL."

Whilst the *Nashville* was still in dry dock, the United States' war-steamer *Tuscarora* made her appearance in Southampton Water. The subsequent history of

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the two ships, till they went to sea, cannot be more clearly or succinctly told than in the following statement furnished by the Admiralty. It supplies a good example of the risks and annoyances which the meeting of hostile vessels in a neutral port is likely to inflict on the neutral, the precautions which it is necessary to take, and the vigilance required in enforcing them.

"*Statement of Facts with regard to the* Tuscarora, *United States' Vessel-of-war, and the* Nashville, *a Vessel belonging to the so-styled Confederate States.*

"*November* 21, 1861.—*Nashville* arrived at Southampton, and taken into dock for caulking and other repairs.

"*December* 15.—*Tuscarora* arrived, and anchored off entrance to River Itchen.

"*December* 23.—Captain Patey reported, no repairs had been made in *Nashville* beyond what were absolutely necessary, and that she had not been in any way equipped more completely as a man-of-war.

"*January* 10, 1862.—Captain Patey reported that Dockmaster at Southampton had on previous night found two officers (one with side-arms) and three men belonging to *Tuscarora* under Graving Dock fence on pier between Docks; they stated that they were stationed there by their Captain's orders to watch *Nashville*, and to make a signal to their own ship should *Nashville* attempt to get under way. Dockmaster removed these persons.

"*January* 10.—Captain Patey also reported that *Tuscarora* had received 150 tons of coal, and had kept her steam up since her arrival, with a spring on her cable, apparently ready for sea.

"*January* 11.—Captain Wilcox, of Her Majesty's ship *Dauntless*, stationed in Southampton Water, informed Captains of *Tuscarora* and *Nashville* that he had observed preparations for their departure, and had instructions to prevent any hostilities in British waters, and brought to their notice that the Law of Nations requires that twenty-four hours should elapse before the departure of one belligerent ship from a neutral port in pursuit of another; Captain Patey as Senior Officer at Southampton also informed Captains of *Tuscarora* and *Nashville* that he had received orders to detain one vessel until the other had twenty-four hours' start. Captains of two vessels answered they would conform to law; and Captain Craven (of *Tuscarora*) claimed right of free access to and egress from 'waters of a nation believed to be in amity with United States,' trusting that strict impartiality would be observed between the two vessels. In reply Captain Patey referred to fact of Captain Craven having sent officers

and men into Docks to watch *Nashville*, and also pointed out that a boat, apparently armed, from the *Tuscarora*, had been observed pulling in and out of the Docks without landing during the night. Captain Craven gave assurance that this would not be repeated.

"*January* 13.—*Tuscarora* left anchorage at 4 A.M., and proceeded to anchor one mile west of Calshot light-ship. Returned at 4 P.M. to former anchorage at entrance of Itchen river.

"*January* 15.—*Tuscarora* at 2 P.M. weighed, and passed Calshot.

"*January* 16.—At 2 P.M. returned to original anchorage.

"*January* 20.—At 8 P.M. proceeded down Southampton Water, and anchored outside Calshot Castle.

"*January* 22.—At 10 A.M. returned to anchorage at mouth of Itchen river.

"*January* 25.—Captain Patey reported *Nashville* coaled, and necessary repairs completed, and *Tuscarora* ready for sea; also that, in conversation with him, Captain Craven, of *Tuscarora*, had avowed that he would do his utmost to render rule as to twenty-four hours' start null and void, by constantly keeping up steam, and having slips on her cable, so that the moment *Nashville* might move *Tuscarora* would precede her, and claim priority of sailing, returning again within twenty-four hours, and so actually blockading *Nashville* in a neutral port.

"*January* 26.—Under instructions Captain Patey obtained written promises from Captains of *Tuscarora* and *Nashville* not to leave their then positions without giving twenty-four hours' notice.

"*January* 27.—In order to prevent any hostile proceedings between the two vessels in British waters, a messenger was despatched in the morning to Southampton with instructions to Captain Patey to require *Nashville* to depart by 12 o'clock at noon on Tuesday, the 28th of January, and *Tuscarora* on following day at same hour; but at 1 P.M., and before receiving these last-mentioned instructions, Captain Patey telegraphed that Captain of *Tuscarora* had notified to him that that ship would put to sea on the following day, namely, on the 28th January, at 11 A.M. To this telegram an answer was at once sent that *Tuscarora* was accordingly to be allowed to proceed first; and, under the circumstances, Captain Patey did not think it necessary to acquaint the Captain of *Tuscarora* of the orders he (Captain Patey) received subsequently (on the afternoon of the 27th), requiring the ship to quit Southampton.

"*January* 28.—Captain of *Tuscarora* reported by letter to Captain Patey that he should defer departure, in consequence of inclemency of weather, until 29th, or first fine day. Captain Patey, in answer, told Captain Craven that he saw nothing in the state of the weather to prevent *Tuscarora* proceeding, and requested she would lose no time in doing so, observing that, having received from Captain Craven a written notification of his intention to proceed on the 27th, at 11 A.M., he (Captain Patey) had not deemed it necessary to convey

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to Captain Craven the instructions he had received for *Tuscarora* to leave Southampton at noon on the 28th.

"*January* 28.—Captain Patey directed by telegraph not to take any steps, at present, to compel *Tuscarora's* departure.

"*January* 29.—At 8·10 A.M. *Tuscarora* proceeded down Southampton Water.

"*January* 30.—Captain Patey, by telegraph, reports *Tuscarora* at 2 P.M., remains in Yarmouth Roads, and he asks for instructions as to *Nashville's* departure. Informed, in reply, that the time of *Nashville's* departure will date from hour *Tuscarora* shall really go to sea, in accordance with notice.

"*Admiralty*, *January* 30, 1862."

Captain Patey's letter of the 25th January, referred to in the foregoing Memorandum, was as follows:—

Captain Patey to the Secretary to the Admiralty.

(Extract.) "*Southampton*, *January* 25, 1862.

"I have the honour to request you will be pleased to bring under the consideration of the Lords Commissioners of the Admiralty whether it is intended to allow the American Federal ship-of-war *Tuscarora*, and the vessel-of-war *Nashville* of the so-styled Confederate States of North America to remain at this port for an indefinite period.

"The *Nashville*'s necessary defects have been made good, and she has been coaled; and, judging from the frequent movements of the *Tuscarora* up and down the Southampton Water, including one trip through the Needles and round the Isle of Wight, that that ship is in all respects ready for sea, I am induced to bring this matter under the notice of their Lordships, because it appears to me from the course pursued, and avowedly so made known to me by the Captain of the *Tuscarora* in a conversation which I have had with that officer, he will do his utmost to render the rule of twenty-four hours' start which the *Nashville* may be inclined to take advantage of, null and void, by constantly keeping up his steam, and having slips on his cable, so that the moment *Nashville* moves *Tuscarora* will precede her, and at once claim priority of sailing, returning to this port again within the lapse of twenty-four hours; it hence follows that *Nashville* is closely blockaded in a neutral port, and this is, without doubt, the special object of the *Tuscarora's* visit to Southampton.

"I would also beg to point out to their Lordships the possibility of the *Tuscarora* and *Nashville* coming into collision in a narrow channel and at night, and the probability of *Tuscarora*, supposing that the other ship had purposely run into her, opening fire on her, and hence bringing on a grave difficulty in the matter. Under all the circumstances of this peculiar case, I think it my duty to make this communication to their Lordships, that they may take such steps as may by them be deemed necessary, respectfully submitting that the

Commanders of the *Tuscarora* and *Nashville* respectively should be called upon to give me a written notice of the date and hour they intend to proceed to sea, and that having received such notice from either one, the other should be immediately notified of the fact, and that he would not be allowed to follow until twenty-four hours had elapsed."

The rule that, when hostile ships meet in a neutral harbour, the local authority may prevent one from sailing simultaneously with or immediately after the other, even though they may have entered without previous notice that such a prohibition would be enforced, will not be found in all books on International Law. The recorded cases in which it has been appealed to are not numerous, though they extend over a considerable period of time. It is, however, a convenient and reasonable rule; it has gained, I think, sufficient foundation in usage; and the interval of twenty-four hours, adopted during the last century in a few Treaties and in some Marine Ordinances, has been commonly accepted as a reasonable and convenient interval, though it may perhaps be questioned whether a steamer, which can always in a very few hours gain an offing that puts her beyond the reach of pursuit, requires for her protection so long a period as was formerly thought necessary for sailing ships. There are, however, difficulties in applying the rule, which are well exemplified in the case of the *Tuscarora* and *Nashville*. Where there is a considerable disparity of force, it is the interest of the weaker party to get the start of his enemy; whilst the latter will, if he be able, prevent this—will take what advantage he can of uncertain weather—and, if he goes first to sea, will linger in the offing. The neutral authority should be firm in detecting all manœuvres, within the local limit of its jurisdiction, to frustrate or elude the rule. The vessel which first came in should be permitted, and may be required, to sail first, if ready for sea; if not ready, she should not be suffered to delay the

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departure of her adversary; notice of an intention to sail should be reasonable in point of time, and punctually adhered to; and the right of priority should be lost by failure to depart at the expiration of the notice, as well as by a return before the end of the interval during which the other belligerent is detained in port.[1]

The practice of the late war has assisted to settle and confirm this salutary rule. Another course, however,

[1] "Les belligérants ne doivent, ni par eux-mêmes ni par leurs corsaires, s'établir dans les mers neutres pour surveiller l'ennemi et lui courir sus. Ils ne doivent pas non plus rester en croisière dans les mers neutres pour saisir l'ennemi à sa sortie des ports neutres ou amis. Et lorsqu'ils ont été avec l'ennemi chercher asile dans un port, ils ne doivent pas le poursuivre à sa sortie. On oblige généralement les corsaires à ne sortir que vingt-quatre heures après le navire qu'ils avaient poursuivi. Quant aux bâtiments de guerre, on exige seulement la parole d'honneur du commandant de ne pas donner la chasse aux bâtiments ennemis, et de ne les combattre qu'après vingt-quatre heures depuis la sortie du port."—De Pistoye et Duverdy, *Traité des Prises Maritimes*, vol. i, p. 108.

"La priorité est très importante. En effet celui qui, étant le plus faible, désire eviter un combat a un très grand intérêt à mettre la voile vingt-quatre heures avant son adversaire, parce que cette avance lui donne la presque certitude d'échapper à l'ennemi. L'usage adopté à cet égard est que le bâtiment entré le premier a le droit de sortir également le premier. Cependant, comme le retard qu'il mettrait à effectuer son appareillage ne peut retenir son ennemi dans le port pendant un temps plus long qu'il ne veut y rester, le commandant entré le premier dans le port n'ayant exprimé aucune intention de reprendre la mer le premier, le vaisseau entré le dernier qui desire sortir doit prévenir les autorités du port vingt-quatre heures à l'avance. Celles-ci font connaître la notification au vaisseau entré le premier afin qu'il n'ait à profiter du délai et user de son droit de priorité. S'il ne le fait pas, son ennemi peut mettre à la voile pendant les vingt-quatre heures suivantes; mais s'il n'exécute pas son projet dans ce délai il est dans la nécessité de faire une nouvelle notification et d'attendre un nouveau laps de temps de vingt-quatre heures. Le délai court non du moment de la notification du commandant, mais de celui de l'appareillage réel, lorsqu'il a eu lieu immédiatement."—Hautefeuille, *Droits et Devoirs des Nations Neutres*, vol. i, p. 366.

The discussion which arose in the case of the French ships under M. de Castillon, and the squadron under Vice-Admiral Brodrick, both anchored in the harbour of Cadiz in 1759, is stated in Ortolan, *Diplomatie de la Mer*, vol. ii, p. 257.

has been sometimes taken. This is to exact from the commanding officer of the ship which is the last to sail his word of honour that he will not give chase to or attack, within a certain time, the enemy who has preceded him. This alternative is preferred by some authorities, on the ground that it not only avoids the necessity for a delay which may be irksome and inconvenient, but is in reality more efficacious, since an officer who will certainly evade, if he can, a restriction which is forced on him will not try to evade his word of honour. The objection to it appears to lie in the difficulty of making the promise specific enough to be effectual, without fettering, more than is absolutely necessary, the belligerent's right to engage his enemy when and where he is able.[1]

The story of the *Sumter* and *Iroquois*, which belongs to the same period, may be placed side by side with that of the *Nashville* and *Tuscarora*. The rule of twenty-four hours was enforced, as we have seen, on the *Tuscarora ;* the *Iroquois*, as we are about to see, contrived to avoid it, but all to no purpose. The *Sumter* — I return once more to the career of that reckless little cruiser — reached Martinique on the 9th November. Preparing, as she then was, for a run across the Atlantic, she had pressing need of coal. The Collector at St. Pierre refused at first to permit it to be supplied; but Captain Semmes obtained a letter from the Governor, before which the scruples of the inferior official gave way.[2] She was not yet ready for sea when the United States' steam-sloop *Iroquois*, a vessel superior to the

[1] Hautefeuille (vol. i, p. 369) would extend the engagement to the whole subsequent voyage of the ship which sails first; but this is a restriction to which no naval officer could be reasonably asked to submit.

[2] "Having observed a large supply of excellent coal in the Government dockyard as I pulled into the landing, I proposed to his Excellency that he should supply me from that source upon my paying cost and

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Sumter in speed and of twice her weight and fighting power, appeared in the broad expanse of water which forms the bay or roadstead of St. Pierre. The shifts to which the captain of the *Iroquois* had recourse, in contempt (so far as he dared) of the neutrality of the port, and his bitter disappointment, were related in his official report to the Secretary of the Navy, and are best told in his own words:—

"*United States' Steamer 'Iroquois,' off St. Pierre, Martinique, November* 17, 1861.

"Sir,

"I addressed a letter to the Department on the 11th instant, upon my arrival at St. Thomas.

"On the day following, in the midst of coaling, a mail steamer arrived, bringing information that the *Sumter* had just put in on the 9th to Port Royal, Martinique, in want of coals.

"I had been often led astray by false reports, but this seemed so positive that I instantly ceased coaling, got my engines together, and was off at 2 in the mid-watch for Martinique, arriving at St. Pierre in thirty-six hours. On turning into the harbour I discovered a suspicious steamer, which, as we approached, proved to be the *Sumter*, flying the Secession flag, moored to the wharf, in the midst of this populous

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expenses. He declined doing this, but said that I might have free access to the market for this and other supplies.

"My paymaster and lieutenant returned, in good time, from St. Pierre, and reported that they had found an abundance of excellent coal, at reasonable rates, in the market, but that the Collector of the Customs had interposed to prevent it from being sold to them. Knowing that this officer had acted without authority, I addressed a note to the Governor, reminding him of the conversation we had had the day before, and asking him for the necessary order to overrule the action of his subordinate. My messenger brought back with him the following reply:—

"'*Fort de France, November* 12, 1861.

"'To the Captain:—

"'I have the honour to send you the enclosed letter, which I ask you to hand to the Collector of Customs, at St. Pierre, in which I request him to permit you to embark freely as much coal as you wish to purchase in the market. * * *

"'With the expression of my highest regard for the captain,

"'MAUSSION DE CONDE.'"

—*My Adventures Afloat: a Personal Memoir of my Cruises and Services in the Sumter and Alabama.* By Admiral R. Semmes, late Confederate States' Navy, 1869, pp. 233, 236.

town, quietly coaling. The town and shipping in the harbour were instantly all excitement. I could not attack her in this position, for humanity's sake, even were I disposed to be regardless of the neutrality of the port. I did not anchor, but cruised around the harbour within half gun-shot of her during the night.

"In the morning a French man-of-war arrived from Port Royal, the seat of government, only twelve miles distant. The *Sumter* had been there for the last two days. The Government, it is true, had refused to give her any of its coals, but had allowed her to come around to St. Pierre, where she readily obtained them from some merchants (English, I believe).

"She evidently had been received with courtesy at the seat of Government, and this farce of the non-recognition of the Confederate flag is played out by both France and England in the most flagrant manner.

"I now addressed a letter to the Governor, assuming him to be ignorant of the character of the *Sumter*, a copy of which I enclose. I also enclose a translation of his reply. The Department will observe that from the generous disposition of the Governor, the *Sumter* has the same privileges as this vessel.

"The captain of the French war-steamer also addressed me a letter, saying he was directed by the Governor to request me no longer to compromise the neutrality of the French waters by establishing a blockade within their jurisdiction, but to anchor, when every hospitality and facility should be afforded me, or to take my position without the distance of a marine league from shore. At the same time, that, while under anchor weigh it was contrary to the police regulations of the port to communicate with the shore.

"I consequently decided upon anchoring, which I had no sooner done than the French commander paid me a visit, offered me every civility and attention, saying that he did not doubt that all international law would be respected by me; and in the course of conversation, quoting from Wheaton, reminded me that one belligerent could not depart until twenty-four hours after the other. I instantly got under weigh, with him on board, fearing that the *Sumter* should do so before me, as her steam was up.

"I have now accepted the alternative, and established myself at the mouth of the harbour, without the marine league, with much anxiety lest during the darkness of the night, under cover of the high land, the *Sumter* should be able to get off without my being aware of it.

"The majority of the town is in favour of the *Sumter;* and with the utmost vigilance, which all on board exert, she may yet escape some night for want of signals from the shore to give us notice of her departure.

"I am also in want of coal, and shall send over to St. Thomas to-morrow for a supply, as well as provisions, stores, &c., for when I left I did not bargain for this blockade.

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"The *Sumter* seems in good condition. The Consul informs me she has 120 men. She does not certainly appear to be in the disorganized state in which late accounts have represented her.

"She has latterly captured but two American vessels—one the brig *Joseph Parke*, of Boston, on the 25th of September; the other the schooner *Daniel Trowbridge*, of New Haven, on the 27th of October. She has landed here fourteen prisoners on their parole. Three of the *Joseph Parke*'s men (all foreigners) joined the *Sumter*.

"I regret to give the Government so long and unsatisfactory a letter, but must avail myself of the opportunity for St. Thomas, which offers to-morrow.

"I have, &c.

(Signed) "James S. Palmer, Commander.

"To Hon. Gideon Welles,

"Secretary of the Navy, Washington, D. C."

"P.S.—November 18.—I feel more and more convinced that the *Sumter* will yet escape me, in spite of all our vigilance and zeal, even admitting that I can outsteam her, which is a question.

"To blockade such a bay as this, which is almost an open roadstead, fifteen miles in width, the surrounding land very high and the water very bold, obliged, as we are by the neutrality laws, to blockade at three miles' distance, it would require at least two more fast steamers, and a vessel of war of any description in port to notify us by signal of her departure, to give any reasonable hope of preventing her escape.

"Even now, moonlight though it be, she may yet creep out under shadow of the land, and no one be able to perceive her, she being always able to observe my position, open to seawards. Though I have made arrangements to be informed by signal of her departure from shore, I fear I cannot depend upon the parties, so fearful are they of the authorities and of popular indignation.

"I have done all I can, and if she escapes me, we must submit to the distress and mortification.

"I believe we have no vessel on this station except the *Macedonia*, and there is no knowing when she may get up this way to learn our situation.

"I wish the *Sumter* were anywhere else except in this port, or under French protection. The authorities here, under plea of neutrality, are throwing every obstacle in my way, in the way of communicating with the shore. They are so full of punctilio, and withal so polished, that it is provoking to have anything to do with them."

(Enclosure 1.)

"*United States' Steam-ship 'Iroquois,'*

"Sir, "*Off St. Pierre, November* 15, 1861.

"As circumstances prevent my paying my personal respects to your Excellency or your representative at this place, I write to announce my

arrival in the afternoon of yesterday, as well as to inform you that to my surprise I find a notorious steamer called the *Sumter* quietly coaling at the wharves, and enjoying the hospitalities of the port.

"As your Excellency cannot be aware of the character of this vessel, I denounce her to you as one that has been for some time engaged in piracy upon the commerce of the United States, robbing, burning, or otherwise destroying all American vessels which come within her reach.

"May I not hope, therefore, that your Excellency, upon this representation, will not allow her to enjoy the privileges I complain of, but direct her to leave the protection of the French flag, and the immunities of a French port?

"I have, &c.

(Signed) "JAS. S. PALMER,

"Commanding U. S. Steamship *Iroquois*.

"To his Excellency the Governor of Martinique."

(Enclosure 2.)

"*Gouvernement de la Martinique, Cabinet du Gouverneur,*

"*No.* 430, *Fort-de-France, le* 15 *Novembre*, 1861.

(Translation.)

"M. le Commandant,

"I have the honour to reply to the letter which you addressed me this morning.

"I am not ignorant, M. le Commandant, of the presence in the roads of St. Pierre of a vessel belonging to the States of the South, who profess to have formed a separate Confederation.

"To accomplish the generous intentions of the Emperor, I wish to be hospitable to the vessels of the two belligerent parties, but I will not, neither cannot, without violating the orders of His Majesty, divest myself of the absolute neutrality that I ought to observe.

"This is to say to you, M. le Commandant, that if it is not my intention to refuse an anchorage to a vessel belonging to the States of the South, I offer to you, on the other hand, the same hospitality, and the same facilities to the vessels belonging to the Government of the Union, which you have the honour to command.

"There exist, besides, international laws, that every civilized nation scrupulously observes, and which I need scarcely recall to you, M. le Commandant, nor to the Commandant of the *Sumter*.

"Accept, &c.

(Signed) "LE ADMIRAL,

"Gouverneur de la Martinique, &c.

"M. le Commandant de l'*Iroquois*."

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"*United States' Steam-ship 'Iroquois,' off St. Pierre, Martinique,*
"Sir, "*November* 23, 1861.

"I think it is well in my present provoking and anxious position to keep the Government informed by whatever opportunity may offer.

"It is now the ninth day that I have been blockading the *Sumter*. She lies still at the wharf, surrounded by more or less of a crowd day and night, all anxious for her escape, sympathizing with their fellow Frenchmen of the State of Louisiana, to which State they believe the *Sumter* to belong. The authorities, from the Governor down, I believe to be all in their favour. I directed the Consul the other day to call upon the Governor and inform him that I regarded the attitude of the authorities as unfriendly to the United States. I quote you the Consul's reply:—

"'I called on the Governor on Monday night, but could do nothing more than to ask an audience for the next day, as his salon was full of people, among them the Captain of the *Sumter*. When I saw him, he said the sanitary regulations were such as were enforced on Monday, and that he had no control over them. The vessel having gone beyond the regular health and Custom-house limits, has lost the right of regular pratique, the Governor of course repudiating anything like unfriendliness, and regretting the necessity of submitting to the laws in your case, and would be glad to see you in here at anchor to prove the sincerity of his good wishes.'

"Unfortunately for me the coming to an anchor involves the necessity of waiting twenty-four hours after the departure of the *Sumter*, for I have consented to the Governor's expressed hope that I would abide by all rules of international law; consequently I am obliged to cruise outside, and run the risk of her escaping every night.

"Thus far we have had the moon, but it is now waning fast, and, with the most intense watching and devotion, I fear I may yet have to report her escape. Would that there were another fast steamer to watch the other point of the bay! I have some understanding with some loyal people on shore to notify by signal of her departure.

"The French will doubtless think it a great outrage upon their neutrality, but they will have to pocket this, as I have been as forbearing as they can expect, and nothing but the feeling of the impolicy of bringing on hostilities between my country and France makes me submit with anything like grace.

"I have, &c.

(Signed) "James S. Palmer, Commanding.

"Hon. Gideon Welles,

"Secretary of the Navy, Washington, D. C."

"*United States' Steam-ship 'Iroquois,' St. Thomas, W. I., November* 25, 1861.

"Sir,

"As I expected, I have to report the escape of the *Sumter*, to the great dejection of us all, for never were officers and crew more zealous for a capture.

"At 8 o'clock on the night of the 23rd, the signal was faithfully made us from the shore, that the *Sumter* had slipped to the southward. Instantly we were off in pursuit, soon at full speed, rushing down to the southern part of the bay, but nothing was visible on the dark background.

"A small steamer, apparently one plying between St. Pierre and Port Royal, was off the point making signals, doubtless for the benefit of the *Sumter*. But we could see nothing of her as we proceeded on, so dark was the shadow thrown by the high land. Still we went on, all searching the darkness in vain. So soon as I had opened Port Royal Point, and seen nothing on the now open horizon, I concluded that we had passed her, or that she had doubled on us and gone to the northward. I then turned, keeping close on the shore, looking into her former anchorage, thinking she might possibly have returned.

"No sign of her there. We continued on to the northward, but when we opened the port nothing of her this way.

"We were now at fault which way to steer. Something like smoke being reported to seaward, I determined to start out, taking the direction to St. Thomas, to which place I was anxious to return, ere the vessel with our coals and provisions should leave, and thus check at least a small evil, for I now became hopeless of ever discovering the *Sumter*.

"I reached this port this morning, and found that the *Dacotah*, which had arrived on the 21st from the East Indies, had taken in tow my vessel, with her stores, and gone to meet me.

"It is, of course, all conjecture where the *Sumter* will next cruise. I learned at St. Pierre that she had purchased sea-jackets for her crew, which may look like a cruise on our Northern coast, though I question whether she is calculated for winter service in that quarter. Should she continue in this vicinity, I will soon hear of her from the constant arrivals here.

"I shall be glad to understand from the Government whether they wish me to respect international law in the case of the *Sumter*, which gives her so great immunity, and makes every foreign port her asylum.

"I was informed at Martinique that France would regard it as an act of war if I attacked her within the marine league of the island.

"I have, &c.

(Signed) "James S. Palmer, Commander.

"Hon. Gideon Welles,

"Secretary of the Navy, Washington, D. C."[1]

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[1] These despatches are extracted from Moore's *Rebellion Record*, vol. iii, pp. 452–455.

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The *Sumter* had in fact doubled, as Captain Palmer supposed, and as he might perhaps have foreseen, since the red lights which served him for signals were as visible to his enemy as to himself; and she was running northwards with all the speed she could muster while the *Iroquois* was racing to the south. He fully merited his disappointment. A ship which, after dropping anchor, proceeds to station herself in the offing, just beyond the marine league, keeps up, while there, communication by boats with the shore, and gets her enemy's movements signalled to her, grossly infringes the neutrality of the port; and these acts, which the Governor of Martinique was perhaps unable to prevent, would not have been tolerated at Cherbourg, nor, as we have already seen, at Southampton.

CHAPTER XII.

History of the Blockade continued.—Sinking of Stone-ships at Charleston and Savannah.—Effect of the Blockade on the South.—Its Effect on the Export and the Cultivation of Cotton.—Blockade-running.—Great Britain urged by the Confederate Government to declare the Blockade ineffective; by the Government of the United States to prohibit Trade with Blockaded Ports.—Correspondence with Mr. Mason; with Mr. Adams.—Remarks.—Nassau Trade.—Repressive Measures adopted in the United States.—Fruitless Remonstrances of Great Britain.—Doctrine of "Continuous Voyages" applied to Breaches of Blockade.—Decisions of the Supreme Court.—Remarks.—Blockade-running ultimately made unprofitable.—Trade with Matamoros, and Questions raised by it.—Correspondence as to Mails and Mail-bags.—Regulations as to persons captured in Blockade-runners.—Case of the *Emily St. Pierre*.

THE difficulties with which the Federal Government had to struggle in blockading an extended coast with a hastily armed and comparatively slender force suggested, at the approach of winter, a peculiar expedient for economizing the services of its scattered marine, which was thus described by the Secretary of the Navy:—

"One method of blockading the ports of the insurgent States, and interdicting communication, as well as to prevent the egress of privateers which sought to depredate on our commerce, has been that of sinking in the channels vessels laden with stone. The first movement in this direction was on the North Carolina coast, where there are numerous inlets to Albemarle and Pamlico Sounds and other interior waters, which afforded facilities for eluding the blockade and also to the privateers. For this purpose a class of small vessels were purchased in Baltimore, some of which have been placed in Ocracoke Inlet.

"Another and larger description of vessels were bought in the eastern market, most of them such as were formerly employed in the whale fisheries. These were sent to obstruct the channels of Charleston harbour and the Savannah River; and this, if effectually done, will prove the most economical and satisfactory method of interdicting commerce at those points."

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To each of the two latter places were sent in November or December a fleet of old ships laden with five or six thousand tons of stone. They were towed in and sunk in several rows, so disposed as to obstruct the navigation without impeding the flow of water. This mode, said the officer employed to superintend the operation at Charleston (he had been previously employed on a Commission for the improvement of the harbour, and was, therefore, well acquainted with it), "is intended to establish at Charleston a combination of artificial interruptions and irregularities resembling on a small scale those of Hell Gate or Holmes Hole, and producing, like them, eddies, whirlpools, and counter-currents, such as to render the navigation of an otherwise difficult channel hazardous and uncertain."[1] Being sunk inside the bar, or rather on both crests of it, it was expected that the sand carried up and down by the tides and the river would accumulate around them, and that they would soon become firmly imbedded.

Of the six entrances or channels leading to Charleston Harbour from the sea, there are but two, I believe, which have as much as eleven feet of water; and only one—the "main ship channel"—is much used by vessels of considerable burthen, the other being difficult and narrow. The stone-ships were deposited in the main channel.[2]

This operation, which threatened to choke up or

[1] *Lord Lyons to Earl Russell*, 2nd January, 1862.

[2] The whole operation was described with minute detail in a letter from a looker-on, published in the *New York Tribune*. "The work of the expedition," said the writer in concluding his narrative, "is a complete success. If it seemed sometimes a sad one even to us, with what feelings must the people of Charleston have looked on its progress? All the operations of the fleet were in full sight of Moultrie, Morris, and Sullivan Islands, and Sumter, but not a man could lift a finger to imperil or arrest them. The fire which swept the streets of half the city was a trivial misfortune compared with this final disaster. Its distant results it is impossible to foretell with certainty, for it is necessarily an experiment. An effort to blockade a tidal harbour like

permanently injure the most flourishing and important harbours of the whole Southern coast, excited some uneasiness in England. The Liverpool Shipowners' Association addressed Lord Russell on the subject, as one which seemed to touch the general interests of commerce; and Lord Lyons was directed to make representations to Mr. Seward. In America itself it was variously regarded. "By some," wrote the British Envoy, "it is characterized as an odious and barbarous measure, not sanctioned by the usages of civilized warfare. Others maintain that it is perfectly fair and proper." "The question seems to depend," he justly observed, "on the extent to which the harbours will be permanently injured."[1]

Mr. Seward, on being spoken to, declared at once "that it was altogether a mistake to suppose that this plan had been devised with a view to injure the harbours permanently. It was, he said, simply a temporary military measure, adopted to aid the blockade. The Government of the United States had, last spring, with a navy very little prepared for so extensive an operation, undertaken to blockade upwards of 3,000 miles of coast. The Secretary of the Navy had reported that he could stop up the "large holes" by means of his ships, but that he could not stop up the "small ones." It had been found necessary, therefore, to close some of the numerous small inlets by sinking vessels in the channels. It would be the duty of the Government of the United States to remove all these obstructions as soon as the Union was restored. It was well understood that this was an obligation incumbent on the Federal Government."

this presented a wholly new problem, which was worked out by Captain Davis with great ingenuity and scientific skill; and for his present success it is enough to know that all access by the main ship channel is effectually closed. The bar is paved with granite, and the harbour a thing of the past."—Moore, vol. iii, p. 508.

[1] *Lord Lyons to Earl Russell*, 29th November, 1861.

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When asked whether the principal entrance to Charleston Harbour had not been choked up, he said: "The best proof of the contrary was that in spite of the sunken vessels and the blockading squadron a British steamer laden with contraband of war had just succeeded in getting in."[1]

In fact the measure seems to have been ineffectual. Whether from the body of water brought down by the rivers, from the wash of the ebb tides increased by the strong westerly winds to which those harbours are exposed, or from other causes, the sunken stone-ships do not appear to have produced any lasting obstruction, nor to have added materially to the effectiveness of the blockading squadrons.

It was not until many months after the commencement of the blockade that it began to tell on the resources of the Confederacy, or on the trade and industry of Europe. Nor was the efficiency of it really tested till that pressure came. The great staple export of the South was cotton. Cotton is sown in the spring; the crop begins to be gathered in September, but it does not come into the market in any quantity earlier than December; exportation is busiest during January, February, and March, and the great bulk is delivered by April. It was estimated that only about 750,000 bales, at most, of the crop of 1860 remained on hand in the South at the time when the blockade began. The crop of 1861 was about 2,750,000 bales—a little more than half the total quantity consumed in 1860;[2] and this supply, or so much of it as could be properly picked, cleaned, and baled, would, together with what remained from the previous year, have been available for exportation in the winter and spring of 1861–62. The quantity actually sent abroad, however, up to July or August 1862 was reckoned

[1] *Lord Lyons to Earl Russell*, 14th January, 1862.

[2] 5,200,754 bales. (*American Annual Cyclop dia for* 1861, p. 252.)

not to exceed 50,000 bales, the great bulk of which, but not the whole, went to England. About 1,000,000 bales had before that time been destroyed by the Southerners themselves to prevent its falling into the hands of "the enemy"—that is, of the Federal Government.[1] Mr. Anderson, a member of the British Legation, writing in October 1862, after a journey into Kentucky, Tennessee, and Arkansas, estimated the crop of that year as at most 1,000,000 bales. "It was calculated," he adds, "that even this small amount would be so reduced, from the impossibility of getting it picked in some districts owing to the loss of slaves, and from the difficulty in baling and storing it, owing to the want of hemp and other necessary materials, that the supply for the market would be but trifling. If the war goes on, no expectations are entertained of there being any crop in 1863, as the ground will be thrown into corn. I rode for miles over a cotton district in Tennessee, in which almost every field was growing corn, and I was informed that it was the same through the whole length of the valley of the Mississippi."[2] This information was confirmed by independent accounts from Virginia and Alabama. In December 1862 a bale of cotton worth about 40 dollars in the South could be sold for five times that sum in New York. Very little was now brought to the coast. What there was remained stored up in the interior; and its owners—or at any rate their neighbours—were ready to make a bonfire of it whenever there was danger of its being reached by the Federal armies.

Whilst the chief industry of the South languished for want of a market, and the whole country became rapidly impoverished, the supply of all goods customarily imported from abroad became almost entirely exhausted—a calamity made all the more severe by the fact that

[1] These figures are taken from a report of Mr. Bunch, British Consul at Charleston. (*Consul Bunch to Earl Russell*, 15th August, 1862.)

[2] *Mr. Anderson to Mr. Stuart*, 1st October, 1862.

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the Confederated States had hardly any domestic manufactures. Articles, not merely of luxury but of comfort and convenience, for which they had been wont to depend on their trade with the North and with Europe, rose exorbitantly in price.[1] Civilization, by multiplying our wants, by the division of labour which it introduces, and by opening regular channels of exchange, increases our dependence on one another; and, if we consider how many things every civilized people imports which it could ill do without, we may understand, though imperfectly, what such a people must suffer from an almost total stoppage of foreign trade.

One effect of this pressure was to impart activity to blockade-running. As the first winter of the war passed away — as summer followed spring, and it became evident that both parties had strength and resolution for a long struggle—the temptations held out by this new field of mercantile adventure necessarily increased. During the first year the trade had been chiefly carried on by sailing schooners and small steamers owned in the South, running from one Southern port to another, and

[1] "The almost total cessation of external commerce for the last two years has produced the complete exhaustion of the supply of all articles of foreign growth and manufacture, and it is but a moderate computation to estimate the imports into the Confederacy at 300,000,000 dollars for the first six months which will ensue after the Treaty of Peace. The articles which will meet with most ready sale (and in enormous quantities), as soon as our country is open to commerce, are textile fabrics, whether of wool, cotton, or flax; iron and steel, and articles manufactured therefrom in all their varieties; leather and manufactures of leather, such as shoes, boots, saddlery, harness, &c.; clothing of all kinds; glass; crockery; the products of the vine, whether wines, brandies, or liqueurs; silk and all fabrics of silk; hats, caps, &c.; the large class of commodities known as "articles de Paris;" the "comestibles" of France, including not only preserved meats, game, and fish, but fruits, vegetables, confectionery, and sweetmeats; salt; drugs; chemicals; stationery; manufactures of brass, lead, pewter, tin; together with an innumerable variety of other articles of less importance."—*Mr. Benjamin to Mr. Mason*, 11th December, 1862. (This was a despatch written with a view to its being communicated to Earl Russell.)

from thence to Cuba. Even after the season for the export of cotton had arrived, the ships engaged in the trade under the British flag were at first few.[1] British merchants entered it, and British capital flowed into it, by degrees. Cargoes were now despatched on the joint account of several speculators, each taking his share of profit and loss; or a vessel carried out at a high rate of freight the separate ventures of a number of individual shippers. The outward cargoes were commonly of a most miscellaneous character, and consisted chiefly of such articles of personal and domestic use as were likely to fetch a high price in the South; the return cargoes were almost exclusively cotton, compressed by mechanical contrivances into the smallest possible bulk. The ships bound on these voyages were never advertised, nor was their destination publicly made known, and it is impossible to form anything like an estimate of the extent to which the traffic was really carried on, or the number of persons concerned in it. The frequent recurrence, however, of the same names in connection with it, points to the conclusion that the bulk of it was at all times in a few hands, and that the chief agents were persons who had been interested, before the war, in Southern trade. Of twenty steamers which are said to have been kept plying in 1863 between Nassau and two of the blockaded ports, seven belonged to a mercantile firm at Charleston who had a branch house at Liverpool, and through whom the Confederate Government transacted its business in England.[2]

The extension of blockade-running was evidently

[1] In the list, furnished by Mr. Mason, of vessels entered and cleared at the port of Charleston from 1st October, 1861, to the end of March 1862, 12 are entered as sailing under the British flag, and 65 under that of the Confederacy.

[2] The name of the Charleston firm was "John Fraser & Co.;" that of the Liverpool house "Fraser, Trenholm & Co." Of the five members of the house four, I believe, were South Carolinians and one a British subject.

due to two causes—the large profit which it offered to the bold and fortunate adventurer, and the imperfect effectiveness of the blockade itself. The former may be measured by the prices paid for cotton at Liverpool and for manufactured goods at Charleston; whilst the fact that three or four steamers a week in the cotton season made the voyage between the Southern coast and Nassau would be enough to prove the latter.[1] The Federal and Confederate Governments, in the representations which they addressed to Great Britain from opposite sides and for diametrically opposite purposes, were more or less embarrassed by the combination of these two circumstances, neither of which could be denied, and on both of which, indeed, they both laid stress. The United States, affirming that the blockade was effective, complained in the same breath that it was constantly broken; the Confederates, whilst they declared that it was ineffective and ought not to be respected, enlarged upon the straits to which their country was reduced by the exclusion of all foreign goods, and on the enormous profits which might be secured by Great Britain, could she determine to open the trade by force and pour in a supply. The truth is, that it was quite

[1] This seems to have been the case during the first five months of 1863. "Of seven steamers which the Undersigned alone has kept plying on the sea between said ports, and which have performed no less than thirty-two round voyages within these twelve months just elapsed, aggregating a return cargo of over 21,000 bales of cotton, not one has ever been stopped in her trade, or in any manner impeded in her progress, by the interference of the blockading force; all of them have carried out successfully their adventure, with the exception of the *Kate* and the *Stonewall Jackson*, which were lost by mere accident, the one as she ascended the river near Wilmington, and the other by being stranded on the bar at Charleston. Among the said steamers was peculiarly distinguishable the *Margaret and Jessie* for the precision and steadiness of her voyages, having performed, in less than five months, five complete trips, with a full return cargo of cotton to Nassau, aggregating 3,714 bales, as may be seen by the sworn declaration of J. B. Lafitte, and the certified statement of the Custom-house Collector at this port hereto annexed."—*Mr. Trenholm to Governor Bayley*, 3rd July, 1863.

effective enough to make the risk of capture considerable, swell the blockade-runner's profits, and inflict severe suffering both on the Confederate States and on England, but that it was not effective enough to make the risk prohibitory. It was maintained, to a great degree, by cruising-vessels which kept watch along an immense coast-line. Cruisers driven by steam can now patrol a much greater space than could formerly be covered by sailing ships. Indeed, whether cruising or at anchor, the blockader is comparatively independent of weather; he may defy to a great degree the winds by which in former times squadrons were frequently blown away; while the increased range and weightier metal of modern ordnance give him a longer reach, and enable him to deliver a more crushing blow. But to the nimble and wily adversaries whom it his duty to baffle and intercept, the fleetness and handiness which steam-power confers are perhaps more advantageous still. They can seize opportunities, profit by dark nights or thick weather, wind through difficult channels, creep under the shadow of the land, and by a sudden exertion of speed scud away from an enemy who may be swifter than themselves, but cannot chase them to any distance lest he leave his station unguarded. If the history of the blockade were written, it would be a history of the daring and adroit use of these advantages by men rendered expert by practice. As the nature of the risks to be encountered, and the precautions to be observed, became better known, vessels began to be built specially adapted for this purpose. In the Clyde, as I remember, any observer might have noticed in 1863 and 1864 more than one speedy and insidious-looking craft fitting for sea—long, very low, drawing little water yet with considerable stowage, painted of a dull greenish-gray colour, with a short, raking funnel or pair of funnels, and nothing aloft to catch the eye. These were blockade-runners of the newest pattern.

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Mr. Mason, who continued to reside in London until the autumn of 1863, in the hope of being received as accredited Minister for the Confederate States, was earnest and unremitting in his efforts to induce the British Government to declare the blockade ineffective, and throw open the Southern ports to trade. He forwarded to Lord Russell from time to time long lists of vessels which had succeeded in entering and sailing from Southern ports, and he urged that to recognize such a blockade as effective was inconsistent with the definition adopted in the Declaration of Paris :—

"It may be readily admitted that the fact that various ships entering or leaving a port have successfully escaped a blockading squadron does not show that there may not have been *an evident danger* in so entering or leaving it; but it certainly does show that the blockade was not, in the language of the Treaty of Paris, 'maintained by a force sufficient really to prevent access to the coast of the enemy.'

"I have, therefore, the honour to request, for the information of my Government, that your Lordship will be good enough to enable me to solve the doubt entertained by the President of the Confederate States as to the construction placed by the Government of Her Majesty on the text of the Convention of Paris, as accepted by the Government of the Confederate States in the terms hereinbefore cited, that is to say, whether a blockade is to be considered effective when maintained at an enemy's port by a force sufficient to create an 'evident danger' of entering or leaving it; and not alone where sufficient 'really to prevent access.'"[1]

On the 10th February, 1863, Lord Russell wrote as follows :—

"Sir, "*Foreign Office, February* 10, 1863.

"I have the honour to acknowledge the receipt of your letter of the —— January, referring to the letter which you addressed to me on the 7th of July last, respecting the interpretation placed by Her Majesty's Government on the Declaration with regard to blockades appended to the Treaty of Paris.

"I have, in the first place, to assure you that Her Majesty's Government would much regret if you should feel that any want of respect was intended by the circumstance of a mere acknowledgment of your letter having hitherto been addressed to you.

"With regard to the question contained in it, I have to say that

[1] *Mr. Mason to Earl Russell*, 7th July, 1862.

Her Majesty's Government see no reason to qualify the language employed in my despatch to Lord Lyons of the 15th of February last. It appears to Her Majesty's Government to be sufficiently clear that the Declaration of Paris could not be intended to mean that a port must be so blockaded as really to prevent access in all winds, and independently of whether the communication might be carried on in a dark night, or by means of small low steamers or coasting craft creeping along the shore; in short, that it was necessary that communication with a port under blockade should be utterly and absolutely impossible under any circumstances.

"In further illustration of this remark, I may say there is no doubt that a blockade would be in legal existence although a sudden storm or change of wind occasionally blew off the blockading squadron. This is a change to which, in the nature of things, every blockade is liable. Such an accident does not suspend, much less break, a blockade. Whereas, on the contrary, the driving off a blockading force by a superior force does break a blockade, which must be renewed *de novo*, in the usual form, to be binding upon neutrals.

"The Declaration of Paris was, in truth, directed against what were once termed 'paper blockades;' that is, blockades not sustained by any actual force, or sustained by a notoriously inadequate naval force, such as the occasional appearance of a man-of-war in the offing, or the like.

"The adequacy of the force to maintain the blockade must indeed always, to a certain extent, be one of fact and evidence; but it does not appear that in any of the numerous cases brought before the Prize Courts in America the inadequacy of the force has been urged by those who would have been most interested in urging it against the legality of the seizure.

"The interpretation, therefore, placed by Her Majesty's Government on the Declaration of Paris was that a blockade, in order to be respected by neutrals, must be practically effective. At the time I wrote my despatch to Lord Lyons, Her Majesty's Government were of opinion that the blockade of the Southern ports could not be otherwise than so regarded; and certainly the manner in which it has since been enforced gives to neutral Governments no excuse for asserting that the blockade has not been efficiently maintained.

"It is proper to add that the same view of the meaning and effect of the Article of the Declaration of Paris on the subject of blockades which is above explained was taken by the Representative of the United States at the Court of St. James's (Mr. Dallas), during the communications which passed between the two Governments some years before the present war, with a view to the accession of the United States to that Declaration.

"I am, &c.

(Signed) "RUSSELL."

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Mr. Mason renewed his remonstrances, reverting to the terms of the Paris Declaration :—

"The terms of that Convention are, that the blockading force must be sufficient really to prevent access to the coast. No exception is made in regard to dark nights, favourable winds, the size or model of vessels successfully evading it, or the character of the coast or waters blockaded; and yet it would seem from your Lordship's letter, that all these are to be taken into consideration, on a question whether the blockade is or is not to be respected.

"It is declared in that letter that 'it appears to Her Majesty's Government to be sufficiently clear that the Declaration of Paris could not have been intended to mean that a port must be so blockaded in all winds, and independently of whether the communication might be carried on of a dark night, or by means of small low steamers or coasting craft creeping along the shore.' As a general rule, the ports and harbours of the Confederate States are obstructed by bars, which do not admit the passage of large vessels. What might be considered a 'small' or a 'low' steamer, coming in from sea to the port of New York, would, at one of those Southern ports, be rated a vessel of very fair size when referred to the ordinary stage of water on its bar; yet I look in vain in the terms of the Convention referred to for any authority to expound them in subordination to the depth of water, or the size or mould of vessels finding ready and comparatively safe access to the harbour.

* * * * * *

"In regard to the character of this blockade, to which your Lordship again adverts in the remark that the manner in which it has been enforced gives neutral Governments no excuse for asserting that it has not been efficiently maintained, although I have not been instructed to make any further representations to Her Majesty's Government on that subject since its decision to treat it as effective, I cannot refrain from adding, that for many months past the frequent arrival and departure of vessels (most of them steamers) from several of those ports have been matters of notoriety. A single steamer has evaded the blockade successfully, and most generally from Charleston, more than thirty times. And within a few days past it has been brought to my knowledge that two steamers arrived in January last, and within ten days of each other, at Wilmington (North Carolina) from ports in Europe, one of 400 and the other of 500 tons burthen, both of which have since sailed from Wilmington, and arrived with their cargoes at foreign ports. I cite these only as the latest authenticated instances. And as another remarkable fact, it is officially reported by the Collector at Charleston that the revenue accruing at that port from duties on imported merchandize during the past year, under the blockade, was more than double the receipts of any one year previous to the separation of the State; and

this although the duties under the Confederate Government are much lower than those exacted by the United States.

"As regards other portions of your Lordship's letter, I may freely admit, as it is there stated, that a blockade would be in legal existence although a sudden storm or change of wind might occasionally blow off the blockading squadron. Yet, with entire respect, I do not see how such principle affects the question of the efficiency of such blockade whilst the squadron is on the coast. And again, whilst I am not informed whether or no a defence resting on the inadequacy of the blockading force has been urged in cases of capture before the Prize Courts in America, I can well see how futile such defence would be when presented on behalf of a neutral ship whose Government had not only not objected to, but had admitted, the sufficiency of the blockade."[1]

Lord Russell replied :—

"Sir, "*Foreign Office, February* 27, 1863.

"I have the honour to acknowledge the receipt of your further letter of the 18th instant on the subject of the interpretation placed by Her Majesty's Government on the Declaration of the principle of blockade made in 1856 made by the Conference at Paris.

"I have already, in my previous letters, fully explained to you the views of Her Majesty's Government on this matter; and I have nothing further to add in reply to your last letter, except to observe that I have not intended to state that any number of vessels of a certain build or tonnage might be left at liberty freely to enter a blockaded port without vitiating the blockade, but that the occasional escape of small vessels on dark nights, or under other particular circumstances, from the vigilance of a competent blockading fleet, did not evince that laxity in the belligerent which enured, according to international law, to the raising of a blockade.

"I am, &c.
(Signed) "RUSSELL."

Besieged on the one side by the expostulations of Mr. Mason, the Queen's Government had to reply, on the other, to the complaints of Mr. Adams. It was the "painful conviction" of the American Minister that there was in Great Britain "a systematic plan to violate the blockade." "The toleration of such conduct in subjects of Great Britain is surely a violation of neu-

[1] *Mr. Mason to Earl Russell*, 18th February, 1863.

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trality." "If, in some cases, the American 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."[1]

"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 originated, 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

[1] *Mr. Adams to Earl Russell*, 30th April and 12th May, 1862.

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 over-stated. 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."[1]

To these representations it was replied in effect that they were founded on a misconception of the duties of the Government of a neutral nation. It is not the duty of such a Government to enforce, or assist in enforcing, either by its municipal laws or by the arbitrary action of the Executive, blockades which a belligerent may think fit to institute. The Foreign Enlistment Act, to which Mr. Adams had referred, was passed for an entirely different purpose, and to prohibit enterprises of a very

[1] *Mr. Adams to Earl Russell*, 8th May, 1862.

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different character from mere breaches of blockade; and to class them together was to confound two things quite distinct from one another. Severe as had been the loss and suffering which the blockade had inflicted on the people of Great Britain, the Government had never sought to take advantage of its irregularities and obvious imperfections in order to declare it ineffective. "They have, to the loss and detriment of the British nation, scrupulously observed the duties of Great Britain towards a friendly State." The penalty which the blockade-runner risks, and which the law of nations attaches to his adventure, is capture and condemnation. This is the only penalty. "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." [1]

It is certain that this answer was just, and that the American Envoy was betrayed by the annoyance, which he naturally shared with his Government, at seeing blockade-running prosecuted on so large a scale, into a clearly untenable position. Not only is it a settled rule that to enforce a blockade is the right of the belligerent, and is not the duty of the neutral, but it is necessary that this should be the rule. The test of a valid blockade lies in its effectiveness; and this depends on the force which the belligerent is able to concentrate on the blockaded port, and the vigilance and impartiality with which he uses it. If it be eluded and set at nought, he has only himself to blame. But give him a right to call on the neutral to protect him by punishing blockade-running as a crime, and he is practically relieved from the necessity of protecting himself. The test disappears; disputes between belligerent and neutral would incessantly recur, and with the test would disappear also the only security we have against an indefinite extension of

[1] *Earl Russell to Mr. Adams*, 6th and 10th May, 1862.

the evils which this form of warfare is calculated to inflict on industry and peaceful trade.

These considerations are obvious enough, and it is as obvious that they are not affected by the scale on which blockade-running is pursued — in other words, by the degree to which a particular blockade is ineffectual. Indeed, if there be a case to which they apply with peculiar force, it is that of a blockade maintained, or attempted to be maintained, for months and years, of the whole coast of a large and populous country, with which foreigners are accustomed to carry on an important trade. In such a case blockade-running can scarcely fail to be extensive, and it is sure to acquire the method and all the machinery of a regular business. But it is precisely in such a case that the test ought to be most firmly maintained and most strictly applied.

The British island of New Providence, in the Bahamas, became the favourite resort of ships employed in these enterprises. Situated in close neighbourhood to the coast of Florida, and within three days' sail of Charleston, it offered singular facilities to the blockade-runner. The harbour of Nassau, usually quiet and almost empty, was soon thronged with shipping of all kinds; and its wharves and warehouses became an entrepôt for cargoes brought thither from different quarters. Agents of the Confederate Government resided there, and were busily employed in assisting and developing the traffic.

It was natural that under these circumstances the trade of Nassau should be regarded with extreme jealousy by the Government of the United States. The sudden and extraordinary growth of that trade had been entirely due to the vicinity of the island to the Southern coasts. Of the goods sent thither it was certain that a very large proportion would find their way to the blockaded ports unless stopped on the passage; and there was little room for doubt that these ports were the true

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destination of many cargoes, which, though they might be nominally consigned to Nassau merchants, were really intended to be transhipped and forwarded on account and at the risk of the original shippers, or of consignees in the South. Some part of this commerce was carried on from New York itself; and the American Government determined that, if they could not stop the trade altogether, they would at least prevent it from drawing its supplies from their own shores.

An Act of Congress, passed on the 26th May, 1862, empowered the Secretary of the Treasury to refuse a clearance to any vessel "laden with goods, wares, or merchandize for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such goods, wares, or merchandize, or any part thereof, whatever may be their ostensible destination, are intended for ports or places in possession or under the control of insurgents against the United States." It further authorized the Collector at any port, on the granting of a clearance, to exact, should he deem it necessary under the circumstances of the case, a bond from the master or owner that the cargo should be delivered at the destination for which it is cleared, "and that no part thereof shall be used in affording aid or comfort to any persons or parties in insurrection against the authority of the United States."

The proceedings of the Executive are thus described by Mr. Seward:—

"On the 14th of April, 1862, before the Act of Congress was passed, it had been reported to the President that anthracite coal was being shipped from some of the ports of the United States to Southern ports within, and to other Southern ports without, the United States, for the purpose of supplying fuel to piratical vessels which were engaged in depredating on the national commerce on the high seas. The Secretary of the Treasury therefore, by authority of the President, who is charged with the supreme duty of maintaining and executing the laws, issued to the Collector of the Customs at New York and other ports the following instructions:—'Clear no vessels with anthra-

cite coal for foreign ports, nor for home ports south of Delaware Bay, till otherwise instructed.' It was thereupon represented to the President that this order was unnecessarily stringent and severe upon general commerce, because it prohibited the exportation of coal to ports situated so far from the haunts and harbours of the pirates that the article would not bear the expense of transportation to such haunts and harbours; and therefore the Secretary of the Treasury, by the President's authority, on the 18th of May issued a new instruction on the same subject to the Collectors of the Customs, which was of the effect following:—The instructions of the 14th ultimo concerning the prohibition of the exportation of coal are so modified as to apply only to ports north of Cape St. Roque, on the eastern coast of South America, and west of the fifteenth degree of longitude east. Coal may be cleared to other foreign ports as before until further directed.

"The subject of supplies of coal and other merchandize in the meantime having engaged the attention of Congress with the result of the passage of the law before-mentioned, the Secretary of the Treasury, on the 23rd of May last, and as speedily as possible after the approval of the law, issued the following instructions to the Collectors of the Customs of the United States:—'Until further instructed you will regard as contraband of war the following articles, viz., cannons, mortars, fire-arms, pistols, bombs, grenades, firelocks, flints, matches, powder, saltpetre, balls, bullets, pikes, swords, sulphur, helmets or boarding caps, sword-belts, saddles and bridles, always excepting the quantity of the said articles which may be necessary for the defence of the ship and of those who compose the crew, cartridge bag material, percussion and other caps, clothing adapted for uniforms, rosin, sail-cloth of all kinds, hemp and cordage, masts, ship-timber, tar and pitch, ardent spirits, military persons in the service of the enemy, despatches of the enemy, and articles of like character with those specially enumerated.

"'You will also refuse clearances to all vessels which, whatever the ostensible destination, are believed by you, on satisfactory grounds, to be intended for ports or places in possession or under the control of insurgents against the United States, or that there is imminent danger that the goods, wares, or merchandize, of whatsoever description, will fall into the possession or under the control of such insurgents. And in all cases where, in your judgment, there is ground for apprehension that any goods, wares, or merchandize shipped at your port will be used in any way for the aid of the insurgents or the insurrection, you will require substantial security to be given that such goods, wares, or merchandize shall not in any way to be used to give aid or comfort to such insurgents.

"'You will be especially careful, upon applications for clearances, to require bonds, with sufficient sureties, for fulfilling faithfully all the conditions imposed by law or departmental regulations, from shippers of the following articles to the ports opened, or to any other ports from

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which they may easily be, and are probably intended to be, re-shipped in aid of the existing insurrection, namely, liquors of all kinds, coals, iron, lead, copper, tin, brass, telegraphic instruments, wire, porous cups, platina, sulphuric acid, zinc and all other telegraphic materials, marine engines, screw propellers, paddle-wheels, cylinders, cranks, shafts, boilers, tubes for boilers, fire-bars, and every article whatsoever which is, can, or may become applicable for the manufacture of marine machinery or for the armour of vessels.'"[1]

Under these instructions several vessels bound from New York to Nassau were refused a clearance, and the masters of others were informed that they could only be permitted to sail on giving security, according to the terms of the Act of Congress, that their cargoes should not be shipped, after arriving at Nassau, to any place in the Confederate States, or otherwise disposed of "to the aid and comfort" of the insurgents.

These measures were loudly complained of by the Nassau merchants. They had been in the habit, they said, both of importing largely provisions and manufactured articles from the United States, and of having the commodities which they ordered in England sent by the Cunard steamers to New York, and thence re-shipped to Nassau; these commodities were wanted in the colony, and the detention of them was creating serious loss and inconvenience. Some declared that they had never run the blockade, nor shipped cargoes to any Southern State, and had no intention of doing either of these things. Others insisted that they had a right, as neutrals, to trade with either belligerent; and all contended that, when goods were sold in an open market, the vendor could not reasonably be held answerable for their ultimate destination.

These remonstrances were supported by the British Government, and a discussion arose, which was protracted through many months.[2] It was admitted, on the part of Great Britain, that a belligerent Power has a

[1] *Mr. Seward to Mr. Stuart*, 3rd October, 1862.

[2] From July 1862 to July 1863.

right to protect itself within its own territory by refusing clearances to vessels laden with contraband of war or other specified articles, as well as to vessels which are believed to be bound to the ports of an enemy; and that, so long as such precautions are adopted equally and indifferently in all cases without reference to the nationality or origin of particular vessels or goods, they do not afford any just ground of complaint. But the refusal of clearances to vessels laden with ordinary merchandize could not be justified on the mere assumption or surmise that there was danger of the goods coming into the possession of the insurgents, unless indeed there were reasonable ground for alleging and believing that some Confederate port was the true destination of the vessels or of their cargoes. Earl Russell pointed out that under a pretext so vague and indefinite the most arbitrary restrictions might be imposed on British trade:—

"With reference to the measures that appear to have been taken by the United States' Government as to the trade with the Bahama Islands, Her Majesty's Government consider that a distinction ought to be made between shipments of coal and other articles *ancipitis usus*, the export of which may have been prohibited as contraband by general orders of the United States' Government to any places within geographical limits, and shipments to the Bahamas or any other part of the British dominions, of provisions and other articles of innocent use not prohibited or made contraband by any such general order. The prohibition of the former class of shipments is public and general, and it falls equally upon the shipping and commerce of all nations, and may be justified on the ground of the exigencies of a belligerent.

"But Her Majesty's Government cannot so regard the interference of the New York Custom-house with the ordinary exports to the Bahamas of dry goods, plain and printed cotton fabrics, &c., shoes, medical drugs, flour, and provisions. Trade between the United States and the Bahamas is regulated by the Treaty of 1815 between the United States and Great Britain, the stipulations of that Treaty having being extended to the Bahamas in 1830 by the mutual acts of both Governments.[1] By the Proclamation of President Jackson,

[1] The Articles in the Treaty bearing on the question are as follows:—

"Article I. There shall be between the territories of the United

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dated the 5th of October, 1830, pursuant to the Act of Congress of the 29th of May, 1830, it was expressly declared to be lawful for British vessels from the Bahamas to import into the United States, and to export therefrom, any articles which might be imported or exported in vessels of the United States. This engagement is still in force, and any prohibition of or interference with exports of ordinary commodities, not contraband of war, from New York to the Bahamas in British vessels is plainly inconsistent with that engagement.

"Her Majesty's Government cannot, therefore, in the absence of any evidence that the articles in question were destined for the so-styled Confederate States, pass unnoticed the general restriction which has been imposed on their export from New York to the Bahamas, and I have accordingly to instruct you to address a representation on the subject to Mr. Seward." [1]

States of America and all the territories of His Britannic Majesty in Europe a reciprocal liberty of commerce. The inhabitants of the two countries respectively shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers in the territories aforesaid to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said territories respectively; also to hire and occupy houses and warehouses for the purposes of their commerce, and, generally, the merchants and traders of each nation respectively shall enjoy the most complete protection and security for their commerce, but subject always to the laws and statutes of the two countries respectively.

"Article II. No higher or other duty shall be imposed on the importation into the United States of any articles the growth, produce, or manufacture of His Britannic Majesty's territories in Europe, and no higher or other duties shall be imposed on the importation into the territories of His Britannic Majesty in Europe of any articles the growth, produce, or manufacture of the United States, than are or shall be payable on the like articles being the growth, produce, or manufacture of any other foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries on the exportation of any articles to the United States or to His Britannic Majesty's territories in Europe respectively than such as are payable on the exportation of the like articles to any foreign country; nor shall any prohibition be imposed on the exportation or importation of any articles the growth, produce, or manufacture of the United States or of His Britannic Majesty's territories in Europe, to or from the said territories of His Britannic Majesty in Europe or to or from the said United States, which shall not equally extend to all other nations."

[1] *Earl Russell to Mr. Stuart*, 18th July, 1862.

"Great Britain has declared her neutrality in the contest now raging between the United States' Government and the so-styled Confederate States. She is consequently entitled to the rights of neutrals, and to insist that her commerce shall not be interrupted, except upon the principles which ordinarily apply to neutrals. These principles authorize nothing more than the maintenance of a strict and actual blockade of the enemy's ports by such force as shall at the least make it evidently dangerous to attempt to enter them. But the fact of a neutral ship having succeeded in evading a blockade affords no ground for international complaint, nor is it an offence which can be punished upon any subsequent seizure of the ship after she shall have successfully run the blockade. Her Majesty's Government consider that it would be introducing a novel and a dangerous principle in the law of nations, if belligerents, instead of maintaining an effectual blockade, were to be allowed, upon mere suspicion or belief, well or ill-founded, that certain merchandize could ultimately find its way into the enemy's country, to cut off all or any commerce between their commercial allies and themselves. This would be to substitute for the effectual blockade recognized by the law of nations a comparatively cheap and easy method of interrupting the trade of neutrals. But when this illegal substitute for such a blockade is applied to a particular nation on account of the geographical position of its territories or for other reasons, while the same ports of the belligerents are open for like exports by other nations, the case assumes a still graver complexion."[1]

On the part of the United States it was insisted in reply that neither the Act of Congress nor the instructions of the Treasury Department were liable to the objections urged against them. "They do not expressly, or by any implication, discriminate against Great Britain, her colonies or dependencies, and in favour of any other nation, or even of the United States. They do not discriminate between British ports, British merchants, British vessels, or British merchandize, and the ports, merchandize, and vessels of the United States, or those of any other nation." There had been no prohibition of any article the growth, produce, or manufacture of the United States, or of Her Britannic Majesty's territories in Europe, within the meaning of the second Article of the Treaty:—

[1] *Draft Note to be addressed to Mr. Seward*, September, 1862.

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"The object of the Statute is to authorize the Collector to refuse permits for merchandize which may be designed to supply insurgents in arms, or of which there may be a danger that they will fall into the hands of the insurgents. The existence of design, in the first of these cases, and the existence of imminent danger, in the other, are facts which must frequently, if not always, be determined by an examination of circumstances. That examination and determination must be made by some agent of the Government, and it seems to the Undersigned that there is no more vagueness in the language by which the power to make them is conferred upon the Collector of Customs than there is in the language of a Statute which directs a Magistrate to arrest offenders, or prevent apprehended crimes, when he is convinced on satisfactory grounds that crimes have been perpetrated or proposed. For the exercise of the proper caution and justice in the case, the subordinate officer is responsible to the Government, and the Government itself is responsible to all parties concerned."

The American Government was willing, however, in order to remove all possible grounds for misconstruction, to rescind the instructions which prohibited the exportation of coal to places within certain geographical limits, and would instruct its Collectors that, in performing their duties, they should be governed by the spirit as well as the letter of the Statute and the instructions under which they acted, so as to make no injurious or invidious discrimination to the prejudice of Great Britain.[1]

The remonstrances of the British Government, therefore, remained practically without effect.

The proceedings of the United States in this case amounted very nearly to a prohibition of trade between the Northern ports and the Bahamas. The Act and Instructions were in terms general, but were in practice applied to commerce with a particular British dependency, and imposed on that commerce, at the arbitrary discretion of a Collector of Customs, conditions with which shippers could not possibly comply. They were, therefore, very well calculated to distress and incommode the colony and persons trading with the colony.

[1] *Mr. Seward to Mr. Stuart*, 3rd October, 1862; *to Lord Lyons*, 9th January, 1863.

But they did not violate any rule of International Law; nor could they, in my judgment, be properly and justly denounced as an infraction of the Treaty of 1815. A neutral port in the neighbourhood of one which a belligerent is actively blockading is ascertained to be carrying on a busy trade with the blockaded port, to afford a shelter and rendezvous for the ships employed in that trade, and a depot for their cargoes. Is the belligerent bound to permit goods to be despatched from his own ports, under his own eyes, to swell the stores of that depot? Is he bound to abstain from enforcing in his own ports regulations by which this may be checked and thwarted? And is he disabled from making such regulations by the circumstance that, under a general clause in a Treaty of Commerce, there is to be reciprocal freedom of trade between the people of the neutral country and his own, subject to the laws of the two countries? This would not, I think, be a reasonable construction of the Treaty.

Other questions arose of more general importance, though they led to little or no controversy between the two Governments, being such as could be disposed of in Courts of Prize. It is the Law of Nations, as understood in England—though Continental jurists question the doctrine, and it has sometimes been attacked in America—that a ship bound for a blockaded port with intent to run the blockade may be captured at any point of her journey. The offence is complete as soon as the voyage is begun. The risk increases, therefore, with the distance to be traversed from the port of shipment to that of discharge. Hence the value to the blockade-runner of a neutral port near to his final destination. Nassau is twenty days, or a little less, from London, and three from Charleston. If cargoes could travel with perfect safety as far as Nassau or Havana, the markets of Europe would be practically transported across the Atlantic, and brought as near to the Southern coast as

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Nassau or Havana. These ports being neutral, ships and cargoes really destined to them were in fact protected, just as they would have been had the voyage been between Liverpool and London or Havre. But what if the ship, though nominally bound to Nassau, were really intended to go to Charleston, touching perhaps at the intermediate neutral port? What again if Charleston were the true destination of the cargo, though Nassau might be the true destination of the ship? How ought the ulterior destination, if proved, to affect ship and cargo: and what is enough to constitute, and what evidence is sufficient to prove, such an ulterior destination?

The American Courts dealt with these questions, and such as these, as rigorously as Lord Stowell could have done. Indeed, they went further than Lord Stowell. They enforced in all its strictness the rule that the act of sailing from a neutral for a blockaded port with intent to enter and with knowledge of the blockade, subjects both ship and cargo to condemnation. If the master's orders were to call at a neutral port on his way and ascertain whether the blockade was still in force, and in that case to proceed no further, and if these orders were *bonâ fide*, it was admitted that the liability would not be incurred. But if the real intention of the owner, or his agent having control over the ship, were that she should run the blockade provided the adventure were not found to be too hazardous, she might then be captured, and could not be screened from condemnation by the possibility that information might have met her at the neutral port which would have led to the abandonment of the design.[1]

Again, as to the destination of the goods. "Neutrals," said Chief Justice Chase, "in their own country may sell to belligerents whatever belligerents choose to buy.

[1] *The Circassian*, Wallace's R. (Supreme Court), ii, 135. *The Admiral*, Wallace, iii, 603.

The principal exceptions to this rule are that neutrals must not sell to one belligerent what they refuse to sell to the other; and must not furnish soldiers or sailors to either, nor prepare, nor suffer to be prepared, armed ships or military or naval expeditions against either. So, too, neutrals may convey in neutral ships from one neutral port to another any goods, whether contraband or not, if intended for actual delivery at the port of destination, and to become part of the common stock of the country or of the port . . . . British merchants as neutrals had during the war a perfect right to trade, even in military stores, between their own ports, and to sell at one of them goods of all sorts even to an enemy of the United States with knowledge of his intent to employ them in rebel war against the American Government, provided only the trade were a real trade, in the course of which goods conveyed from one port to another became incorporated into the mass of goods for sale in the port of destination, and provided sale means sale to either belligerent without partiality to either." But when there is an intention, formed either at the time of the shipment or afterwards, to send the goods forward to a port known to be blockaded, there is substantially, as to the goods, one continuous voyage, which cannot be broken by any transaction at the intermediate port, by their being unladed, transhipped, transferred from hand to hand, or even sold, unless it be a *bonâ fide* sale in the market. They are liable to capture and condemnation, therefore, on the outward voyage to the neutral port. So also is the ship, unless there be reason to conclude that her owners "were ignorant of the ulterior destination of the cargo, and did not hire their ship with a view to it. But if the ulterior destination is the known inducement to the partial voyage, and the ship is engaged in the latter with a view to the former, then whatever liability may attach to the final voyage must attach to the earlier, undertaken with the same cargo

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and in continuity of conveyance." "The ships are planks of the same bridge, all of the same kind, and all necessary to the convenient passage of persons and property from one end to the other." Could a vessel, it was asked, be permitted to proceed almost to the mouth of Charleston harbour and there discharge her lading into a regular blockade-runner? Ought it to make any difference if the transhipment was effected alongside of the quay at Nassau—or if the goods were merely landed from one ship to be put on board another—or if the transaction was further disguised by a fictitious sale?[1]

These decisions extend, and extend for the first time, to breaches of blockade and to conveyance of articles contraband of war, the doctrine (as it is called) of "continuous voyages."[2] Lord Stowell, who was the inventor

[1] *The Bermuda*, Wallace's R., iii, 514. *The Stephen Hart*, *ibid.*, 559. *The Springbok*, Wallace, v, 1. In the case of the *Springbok*, the ship herself was restored, there being no sufficient proof that the alleged destination of the cargo to a blockaded port was known to her owners. But costs and damages were refused to the owners, on the plea that the master had signed bills of lading which did not completely disclose the contents of all the packages on board, and that he had stated on his examination that he did not know on what pretence the ship was captured,—which the Court thought a "misrepresentation."

[2] The (American) case of the *Commercen* (Wheaton's R., i, 382) was cited in argument as a precedent for this extension. But *The Commercen*—a case of not unquestioned authority—can hardly be said to go that length. The ground of the decision is thus stated in the judgment of Mr. Justice Story:—

"The property nominally belongs to individuals, and is freighted apparently on private account, but in reality for public use and under a public contract, implied from the very permission of exportation. . . . Whatever might be the right of the Swedish sovereign acting under his own authority, we are of opinion that, if a Swedish vessel be engaged in the actual service of Great Britain, or in carrying stores for the exclusive use of the British armies, she must, to all intents and purposes, be deemed a British transport."

In this view the destination of the vessel became immaterial, and the ground of condemnation was not the conveyance of contraband, but a constructive incorporation into the enemy's marine.

of this doctrine, and from whose judgments most of the language in which it is clothed has been borrowed, applied it to cases of a different class, in which an underhand trade was attempted to be carried on by subjects of a belligerent with the enemy. Before this war it had been commonly assumed that if a neutral port were the *bonâ fide* destination of the *ship* and the end of her outward voyage, both ship and goods were safe, and a Prize Court would not inquire what was the destination of the *cargo*. The law of blockade and contraband has, therefore, if these decisions are adopted as precedents, been made more rigorous to the neutral. If England or France should hereafter be at war with Mexico, a vessel bound from New York to Mobile or Galveston might be carried into an English or French port on the ground that she had on board muskets or saddles, coats or boots, destined for the Mexican army, and she would be at the mercy of any inferences which an English or French Prize Court might draw from the form of her papers or the character of her cargo. And not only was the rule severe, but it was applied with severity. The evidence of an ulterior destination was in some cases slight. That the ship was to go to the neutral port "for orders," or that goods were shipped deliverable to "order or assigns," seems to have been regarded as sufficient, if the goods themselves were suitable for the Southern market and the owner or shipper was known to have been previously concerned in running the blockade. But there is nothing either irregular or unusual in giving this form to the bills of lading, where goods are consigned to an agent for sale: it is consistent, no doubt, with the hypothesis that they are to be sent on, but it is equally consistent with the other hypothesis that they are to be sold if a purchaser can be found. It is probable that during the late war very few cargoes were really intended to be disposed of at Nassau; and that injustice would rarely be done by acting on the assump-

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tion that the business of Southern traders or agents residing there was not so much to make purchases on the spot as to forward the transmission of goods from Europe. Yet we cannot fail to see that, if the fact of an ulterior destination is to be considered as established by evidence so slender as we find in some of these cases, neutral traders and carriers may have to encounter serious risks and hardships.[1]

The case of the neutral trader is indeed frequently a hard one. Belligerent cruisers have a direct interest in making as many prizes as possible; belligerent Governments are indirectly interested in the success which stimulates and rewards the activity of their cruisers; and the only appeal against a wrongful capture lies to a Court of the captor's country, sitting in that country, and exercising a jurisdiction delegated by the Sovereign of it. Although, however, the jurisdiction of the Prize tribunal is conferred by the Sovereign, the acceptance of it as conclusive between belligerent and neutral reposes on the common usage and general consent of nations. Such a tribunal is bound, therefore, to exercise the highest impartiality, and ought not to be dissuaded from discharging this duty by any fear of discouraging the zeal of the cruiser. To keep a firm check on his cupidity, by the power with which the Court is entrusted of awarding costs and expenses against him, is indeed a part of its duty. This is a reason why the jurisdiction in Prize cases should be exercised by judges of the highest class, and of secure position. It is but seldom, I fear, that a neutral improperly captured obtains any adequate compensation for the loss which has been

[1] It may be further observed that every extension of the belligerent's power to capture on the high seas has a tendency to diminish, more or less, the necessity of keeping an adequate force at the place or places blockaded, and thus to open the door to paper blockades. It has sometimes been suggested as an objection to the British and American doctrine, which recognizes this power in the belligerent, that it has such a tendency.

unjustly inflicted on him; and it must, I think, be owned that, whilst the rules which have been gradually worked out by the Prize Courts of Great Britain and America are not on the whole inequitable, the application of these rules has sometimes been unduly severe. The excuse for this severity lies in the extreme facility with which the rules themselves may be evaded. The jurisdiction of Prize Courts is an incessant struggle with artifices and contrivances which are traditional, and resorted to in all maritime wars, and which are as easy to practise as they are difficult to unmask—artifices and contrivances by which neutral trade is as constantly struggling to escape the heavy pressure of war and elude its restraints.

As the Federal navy grew in strength—and it grew with prodigious rapidity—as point after point on the Southern seaboard was seized by Federal expeditions, and occupied by Federal troops, the blockade of those ports which remained in the hands of the Confederates became more efficient and severe. The trade partly migrated from Nassau and Charleston to Bermuda and Wilmington; but it became in time a losing game to the blockade-runner, and profitable chiefly to the Federal officers who were employed in intercepting him. In other words, the blockade became thoroughly effective when it was confined within a moderate compass and worked by an adequate force.

Texas alone, of all the Confederate States, had an open and unguarded frontier. The Rio Grande, which separates it from Mexico, is broad at the mouth, but so shallow as to be inaccessible for vessels drawing more than seven feet of water. Forty miles up the stream, on the Mexican bank, is Matamoros, and over against it the Texan town of Brownsville. Although a vast tract, untraversed by railroads, lay between the Texan frontier and the more populous States of the Confederacy, whilst every cargo sent up the Rio Grande had to be unladed

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at sea and to ascend the river in lighters, Matamoros sprang into importance during the year 1862, and became the seat of a flourishing trade. Valuable cargoes were dispatched thither, and importing houses established on the spot in connection with mercantile firms in Europe. This traffic, like that of the Bahamas, was jealously regarded by the Government at Washington. Bonds were exacted on clearances for Matamoros as in the case of vessels clearing for Nassau; yet the Northern ports appear to have shared largely in the trade, since it is stated[1] that between November 1862 and February 1863 no less than fifty-nine vessels with cargoes cleared for this destination from New York alone. Several neutral vessels engaged in it were captured, on the plea that a circuitous traffic with Texas through Mexico was an evasion of the blockade of the Texan coast. It was further alleged for the captors that the whole of the Rio Grande, though half of it belonged to Mexico, was intended to be included in the blockade.

The British Government remonstrated against these proceedings. "The trade to Matamoros," wrote Lord Russell, "is a perfectly legitimate trade. It is carried on from New York as it is from London and Liverpool. To pretend that some goods carried to Matamoros may be afterwards transported across the frontier to Texas, does not vitiate the legitimate character of that trade. Nor is it possible to say beforehand that certain goods will be consumed in Mexico, and certain other goods will be carried into the so-called Confederate States. It might so happen that all the goods carried from London might be used in Mexico, and all the goods sent from New York might be transported by land to Texas. This is a matter beyond the scope and destination of the sea voyage."[2] The American Secretary of State did not directly dispute these positions, but he expatiated on the

[1] *Arguendo*, in the case of the *Peterhoff*.

[2] *Earl Russell to Lord Lyons*, 24th April, 1863.

sudden growth of the commerce of Matamoros, and on the notorious fact that merchandize was transported across the Rio Grande into and out of Texas. "As it cannot be assumed by the United States, nor conceded by Great Britain, that all the vessels ostensibly trading between a British port and Matamoros are unlawfully engaged, so it cannot be claimed by Great Britain nor conceded by us, that some British vessels may not be fraudulently engaged in that ostensible trade in conveying supplies to the insurgents of the United States." It was further alleged that the vessels captured were not really destined to Matamoros at all, but were intended to discharge their freights into lighters to be conveyed at once to the insurgents on American, not Mexican, soil; and that this was a question which could only be determined on evidence, and should be left to the judgment of a Prize Court.[1]

The whole question ultimately came before the Supreme Court in the case of the *Peterhoff*, a vessel which had been captured at sea on her voyage to Matamoros with an assorted cargo, computed to be worth 130,000*l*.[2] The Court decided that the United States had not attempted to blockade the Mexican half of the Rio Grande, and could not lawfully have done so. As to the allegation of a circuitous traffic with the Confederate States through Mexico, "trade," they said, "with a neutral port in immediate proximity to the territory of one belligerent is certainly very inconvenient to the other." Such a trade, with unrestricted inland commerce between the port and the enemy's territory, impairs, undoubtedly, and may very seriously impair, a blockade.[3]

[1] *Mr. Seward to Lord Lyons*, 12th May, 1863.

[2] Wallace's R., v, 28.

[3] During the blockade of the Russian ports on the Baltic in the war of 1854, the export and import trade of Russia was carried on through Prussia. The tallow exported from Prussia to this country in one year is said to have amounted to 1,500,000*l*. in value, whilst in the previous year it had been less than 2,000*l*.

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Yet it is not the less lawful on that account. Neutral traffic to or from a blockaded country by inland navigation or transportation is not prohibited; and trade from London to Matamoros, even with intent to supply from Matamoros goods to Texas, violated no blockade, and could not be declared unlawful. But articles contraband of war, on their voyage to a neutral port with a probable ulterior destination to the enemy, were held liable to condemnation, although the presumed transportation from the neutral port to the enemy was to be effected, and could only be effected, by overland conveyance across neutral territory. "It is true that even these goods, if really intended for sale in the market of Matamoros, would be free from liability, for contraband may be transported by neutrals to a neutral port if intended to make part of its general stock in trade. But there is nothing in the case which tends to convince us that such was their real destination, while all the circumstances indicate that these articles at least were destined for the use of the real forces then occupying Brownsville and other places in the vicinity."[1]

[1] This decision extended still further the doctrine of "ulterior destination," which, in the cases of the *Bermuda*, the *Stephen Hart*, and the *Springbok*, was applied to goods intended, or supposed to be intended, to be conveyed all the way by sea. In such a case it is clear that the goods might be captured in the second stage of their journey, and the question therefore is, whether they may not as lawfully be captured in the first stage of it, treating the two stages as together constituting one continuous voyage? But it is otherwise where the ulterior transportation is overland: over this the belligerent never could exercise any control; the condemnation must therefore stand or fall with the broad proposition that the fate of contraband articles, found at sea on board of a neutral vessel, and the liability of the neutral vessel to the consequences of carrying contraband, depend in all cases on what a Prize Court may regard as the ultimate destination of the goods, no matter how that destination is to be reached.

In *Hobbs* v. *Heming* (New Reports, v, 406)—a case which arose in England out of the capture of the *Peterhoff*—the question was, whether a plea that certain goods were contraband of war, and were shipped by the plaintiff for the purpose of being sent to and imported into

In connection with the subject of this chapter, I shall here insert some extracts from correspondence, which

a port in a State engaged in hostilities against the United States, and were liable to be seized by the cruisers of the United States as contraband of war, showed a defence to an action on a policy of assurance. The Court held that it did not. Chief Justice Erle, in the course of his Judgment, said: "If the goods were in course of transport from a neutral to a neutral port, the better opinion (see the authorities collected in Ortolan's *Diplomatie de la Mer*, vol. ii, p. 181) seems to be, that war does not give to a belligerent any right to seize them on account of their quality. The allegation that the goods were shipped for the purpose of being sent to an enemy's port is an allegation of a mental process only; we are not to assume therefore, either that the plaintiff had made any contract or provided any means for the further transmission of the goods into the enemy's State, or that the shipment to Matamoros was an unreal pretence. If the goods were in course of transmission, not to Matamoros but to an enemy's port, the voyage would not be covered by the policy. Here the allegation does not deny the destination to the neutral port to which the insurance relates, but introduces a purpose existing in the mind of the assured, after the termination of the voyage insured, for the ulterior disposition of the cargo and ship. It is consistent with that purpose, as here alleged, that the plaintiff made the consignment for mercantile profit, as the end to be attained by him—in other words, that he knew of an effective demand for warlike stores at Matamoros, and was induced to send a supply by the expectation of high prices, and that he expected that the purchase would probably be made on behalf of the Confederate States, and in that sense had the purpose that the goods should pass into those States. In this sense, price was the ultimate object which he purposed to attain, and Federal and Confederate were alike indifferent as means, provided he attained that end; and in a neutral territory he might lawfully sell to either."

The Court added: "If goods fit for immediate use in war, and therefore of the quality denoted by the term contraband of war, are passing between neutrals, it seems that they are not liable to seizure by a belligerent. The right of capture, according to Sir W. Scott's opinion, expressed in the case of the *Imina* (Rob. iii, 167), attaches only where they are passing on the high seas to an enemy's port: they must be taken *in delicto*, in the actual prosecution of a voyage to an enemy's port. The liability therefore of these goods to lawful seizure, although their quality was such as might make them contraband of war, depended on their destination, and they were not liable unless it distinctly appeared that the voyage was to an enemy's port."

The decision in *Hobbs* v. *Heming* does not directly conflict with the decision in *The Peterhoff*, the question determined in the latter case not having been directly raised in the former. But the opinion of the

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require no explanation. The representations made by the British Government appear to have been reasonable,

Court of Common Pleas does not appear to have been in accordance with that of the Supreme Court of the United States.

In the case of the *Will o' the Wisp*, a British schooner captured on the Texan side of the Rio Grande, while discharging her cargo (part of which consisted of percussion caps and powder) into lighters for Matamoros, the powder and percussion caps having been purchased for the Mexican Government, and a Custom-house permit issued for them, the vessel and cargo were released by the Prize Court of the United States at Key West, "inasmuch as in a trade carried on by neutral nations or ports there can be no such thing as contraband of war, but the trade of neutrals between themselves is unaffected by the war, nor does the United States assume to intercept or interfere with the trade of Mexico or of any of her ports with neutrals." Judge Marvin, however, refused to give the owners their costs and expenses as against the captors, on the ground that a supposed concealment had been practised by packing the powder and caps in casks and kegs marked "codfish," though they had been duly entered in the manifest; and the endeavours of the British Government to obtain compensation were ineffectual.—*Parliamentary Papers*, *North America*, No. 12, 1863.

In the cases of the *Dashing Wave*, *Volant*, *Science*, and *Teresita* (Wallace's R., v, 170, 178, 179, 180), all captured at the mouth of the Rio Grande and north of the line dividing Mexican from Texan waters, restitution was decreed by the Supreme Court; but the Court laid down the following rule:—

"We think it was the plain duty of a neutral claiming to be engaged in trade with Matamoros, under circumstances which warranted close observation by the blockading squadron, to keep his vessel, while discharging or receiving cargo, so clearly on the neutral side of the boundary line as to repel, so far as position could repel, all imputation of intent to break the blockade. He had no right to take voluntarily a position in the immediate presence of the blockading fleet, from which merchandize might be so easily introduced into the blockaded region."

In pursuance of this rule costs and expenses were refused when the vessels had voluntarily anchored north of the line, but were granted in the case of the *Teresita*, which appeared to have drifted across it under stress of weather.

Part of the cargoes of the *Science* and *Volant* consisted of bales of cloth such as was used for Confederate uniforms, but there was no evidence "showing destination to enemy territory or immediate enemy use."

The *Labuan*, also captured at the mouth of the Rio Grande, but south of the line, with a cargo of cotton, and under circumstances that

and to have been readily and fairly met on the part of the United States.

Mr. Seward to Mr. Welles.

"Sir, "*Department of State, Washington, August* 8, 1862.

"Mr. Stuart, the Chargé d'Affaires of Great Britain, has submitted to me, informally, papers touching the recent capture of the *Adela* by the United States' steamer *Quaker City*, which he has received from Vice-Admiral Milne, with papers from Captain Hewett, Commander of Her Majesty's steam-ship *Rinaldo*, on the station adjoining our coast, which among other things represent:—

"In these papers it is stated that the *Quaker City* fell in with the *Adela* near the British Island of Abaco, and within two-and-a-half miles of the coast, and without showing any colours chased and fired at the *Adela* several times.

"It is farther stated that she was seized before the result of any actual search could have proved that contraband of war was on board, which seizure was thus made without previous search, upon the ground that the real destination of the *Adela* was some Southern (blockaded American) port, and not her pretended one, Nassau.

"Commander Hewett farther states that he understood the flag-officer to say that he has orders to seize any British vessels whose names were given to them in orders from the Government, and that being bound from one British port to another would not prevent the

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afforded no excuse for a seizure, was released by decree of a District Admiralty Court.

The *Magicienne*, captured on the outward voyage to Matamoros, and brought into Key West, was restored, and damages paid to the owners under the authority of an Act of Congress. Bills for a like purpose were introduced into the Senate, on the recommendation of the Government and of the Committee on Foreign Affairs, in reference to the cases of the *Labuan*, the *Volant*, and the *Science;* but they appear to have encountered some opposition, and no legislative provision has yet been made for the payment of these claims. In the cases of the *Volant* and *Science* no expenses had been awarded, but the ships and cargoes had been sold under order of the Court, and the proceeds were lost, partly by the failure of a bank in which they were deposited, and partly by the defalcation of an officer of the Court.

The *Sir William Peel*, captured on the Mexican side, was restored, but without costs, there being circumstances of suspicion, and some conflict of evidence. But the Court held that, in the absence of any claim on the part of the neutral (Mexican) Government, the fact that the vessel was captured in neutral (Mexican) waters constituted in itself no ground for restitution.—Wallace's R. v, 517.

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United States' officers from carrying out these orders; and farther, that such were the definite orders that they were, whenever and wherever met with, to seize British steamers or vessels of which official information had been sent them.

"It is farther reported in these same papers, that the *Adela* was bound at that time from one British port to another, and was carrying a British mail from Her Britannic Majesty's Postmasters at Liverpool and Bermuda, addressed to Her Britannic Majesty's Postmaster at Nassau, one of which bags contained despatches from the British Admiral to Her Britannic Majesty's ship *Greyhound*, at Nassau; and that the flag-officer of the *Quaker City* claimed that the mail-bags were liable to be opened, and their contents, including the Admiral's despatches, would be liable to be read in the Court of Admiralty.

"It is the duty of the naval officers to be vigilant in searching and seizing vessels of whatever nation which are carrying contraband of war to the insurgents of the United States. But it is equally important that the provisions of the maritime law in all cases be observed and respected. Without waiting to inquire into the correctness of the representations of Admiral Milne thus brought to my notice, and with a view to prevent collisions between the armed vessels of the United States and Great Britain, I am directed by the President to ask you to give the following instructions explicitly to the naval officers of the United States, namely:—

"First. That under no circumstances will they seize any foreign vessels within the waters of a friendly nation.

"Secondly. That in no case are they authorized to chase and fire at a foreign vessel without showing their colours, and giving her the customary preliminary notice of a desire to speak and visit her.

"Thirdly. That when that visit is made the vessel is not then to be seized without a search carefully made so far as to render it reasonable to believe that she is engaged in carrying contraband of war to the insurgents and to their ports, or otherwise violating the blockade; and that if it shall appear that she is actually bound and passing from one friendly or so-called neutral port to another, and not bound or proceeding to or from a port in the possession of the insurgents, then she cannot be lawfully seized.

"And, finally, that official seals or locks or fastenings of foreign authorities are in no case, nor on any pretext, to be broken, or parcels covered by them read by any naval authorities of the United States; but all bags or other things conveying such parcels and duly sealed or fastened by foreign authorities will be, in the discretion of the United States' officer to whom they may come, delivered to the Consul, Commanding Naval Officer, or Legation of the foreign Government to be opened, upon the understanding that whatever is contraband or important as evidence concerning the character of a captured vessel will be remitted to the Prize Court or to the Secretary of State at

Washington; or such sealed bags or parcels may be at once forwarded to this Department, to the end that the proper authorities of the foreign Government may receive the same without delay.

"The President desires especially that naval officers may be informed that the fact that a suspected vessel has been indicated to them as cruising in any limit which has been prescribed to them by the Navy Department, does not in any way authorize them to depart from the practice of the rules of visitation, search, and capture prescribed by the law of nations.

"Instructions similar to these will be given to the District Attorneys of the United States.

"While preparing the above, your letter of the 5th instant, with the accompanying Report of Commander James Madison Frailey, has been brought to my attention. This Report does not seem to obviate the necessity of a fuller one from that officer on the points raised by Admiral Milne. I will consequently thank you to require a supplementary Report of that character.

"I am, &c.

(Signed) "WILLIAM H. SEWARD."

Earl Russell to Mr. Stuart.

(Extract.) "*Foreign Office, October* 10, 1862.

"Her Majesty's Government are glad to find from your despatch of August 12th that the orders originally given to American cruisers, in regard to interference with neutral vessels, have been rescinded. If those orders had been sanctioned and continued in force by the Government of the United States, they would have called for prompt and firm remonstrance on the part of Her Majesty's Government; and it will be proper that you should intimate to Mr. Seward, while expressing the satisfaction of Her Majesty's Government at their revocation, that Her Majesty's Government are glad to be thereby spared from the necessity of stating their decided objections to their tenor. You will say that to order vessels, though apparently and *primâ facie* carrying on a lawful trade, to be systematically seized on the high seas, without any preliminary search, or without the discovery, during such search, of any strong evidence of suspicion against such vessels, would be to subject the mercantile marine of neutrals to a system of oppression and annoyance which no neutral Government could be expected to toleraet. The unjust seizure under urgent circumstances of a neutral vessel may be considered as one of the occasional burdens which a state of war may impose upon a neutral, and it may be partially compensated by the condemnation of the captor in costs, or in costs and damages; but the indiscriminate and general seizure of merchant-vessels, without previous search, converts an occasional exception into an intolerable rule.

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"The question which has arisen in this case as to the seizure of Her Majesty's mails on board the *Adela*, while it forms a new and very important element in this case, deserving very grave consideration, raises a point of some delicacy and difficulty. Her Majesty's Government cannot doubt that the Government of the United States are prepared to concede that all mail-bags, clearly certified to be such, shall be exempt from seizure or visitation, and that some arrangement shall be made for immediately forwarding such bags to their destination in the event of the ship which carries them being detained. If this is done, the necessity for discussing the claim, as a matter of strict right, that Her Majesty's mails, on board a private vessel, should be exempted from visitation or detention, might be avoided; and it is therefore desirable that you should ascertain from Mr. Seward whether the Government of the United States admits the principle that Her Majesty's mail-bags shall neither be searched nor detained."

Mr. Stuart to Earl Russell.

"My Lord, "*Washington, November* 4, 1862.

"I read the other day to Mr. Seward that portion of your Lordship's despatch of the 10th ultimo, which related to the instructions recently given to the United States' naval officers in regard to the exercise of their belligerent rights in the search and capture of merchant-vessels, as well as to the question of the exemption from visitation or detention of Her Majesty's mails, when any should be found on board such vessels.

"Mr. Seward showed great readiness to admit the principle for which Her Majesty's Government would otherwise have been prepared to contend, with respect to mail-bags clearly certified to be such; and in order that there might be no misunderstanding upon the subject, it was agreed between us that I should make the inquiry in an unofficial letter to which he would give a satisfactory reply.

"I have the honour to inclose copies of the letters which we have consequently interchanged, including a copy of a despatch from him to the Secretary of the Navy, requesting that instructions may be given to their naval officers not to search or open the public mails of any friendly or neutral Power found on board captured vessels, but to put the same, as speedily as may be convenient, on their way to their designated destinations, merely providing that the instructions should not be deemed to protect simulated mails verified by forged certificates or counterfeited seals.

"I have, &c.
(Signed) "W. STUART."

Mr. Seward to Mr. Welles.

"*Department of State, Washington,*

"Sir, "*October* 31, 1862.

"It is thought expedient that instructions be given to the blockading and naval officers that, in case of capture of merchant-vessels suspected or found to be vessels of the insurgents or contraband, the public mails of any friendly or neutral Power, duly certified and authenticated as such, shall not be searched or opened, but be put, as speedily as may be convenient, on their way to their designated destinations. This instruction, however, will not be deemed to protect simulated mail-bags, verified by forged certificates or counterfeited seals.

"I have, &c.

(Signed) "WILLIAM H. SEWARD."

Lord Lyons to Mr. Seward.

"Sir, "*Washington, December* 9, 1862.

"Her Majesty's Government having had under their consideration the letter to the Secretary of the Navy, dated the 31st October last, of which you were good enough to send a copy to Mr. Stuart on the 3rd of last month, have seen with great satisfaction that you have requested the Secretary of the Navy to issue instructions to the United States' naval officers not to search or open the public mails of any neutral or friendly Power, found on board captured vessels, but to send such mails to their destinations as speedily as may be.[1]

"I have, &c.

(Signed) "LYONS."

The following instructions, issued in the third year of the war, relate to the treatment of persons taken on board of ships engaged in blockade-running. In some

[1] "The captain of a merchant steamer is not privileged from search by the fact that he has a Government mail on board; on the contrary, he is bound by that circumstance to strict performance of neutral duties and special respect for belligerent rights." (Judgment in *The Peterhoff*, cited above.)

Where there is no special privilege, there is no special obligation, unless it be an obligation which the neutral master owes to his own Government. Otherwise, the foregoing observation is just. Neutral vessels carrying mails cannot on that account claim to be exempt from search, unless by virtue of a special Convention, and the terms of such a Convention would need to be carefully considered.

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cases, which occurred soon after the commencement of the blockade, British subjects so taken had been detained as prisoners, and required, as the condition of their release, to promise in writing that they would not again embark in a like enterprise, or otherwise interfere with the suppression of the rebellion. The Federal Government, on its attention being called to these irregularities, which were due entirely to the mistaken zeal of its officers, had directed that they should not be repeated, and that the seamen should be considered as absolved from a promise which ought never to have been exacted from them.

Mr. Welles to Rear-Admiral Farragut.

"Sir, "*Navy Department, May* 9, 1864.

"The following instructions will hereafter be observed with regard to the disposition of persons found on board vessels seized for breach of blockade:—

"1. *Bonâ fide* foreign subjects captured in neutral vessels, whether passengers, officers, or crew, cannot be treated as prisoners of war, unless guilty of belligerent acts, but are entitled to immediate release; such as are required as witnesses may be detained for that purpose, and when their testimony is secured they must be unconditionally released.

"2. Foreign subjects captured in vessels without papers or colours, or those sailing under the protection and flag of the insurgent Government, or employed in the service of that Government, are subject to treatment as prisoners of war, and, if in the capacity of officers or crew, are to be detained. If they are passengers only, and have no interest in the vessel or cargo, and are in no way connected with the insurgent Government, they may be released.

"3. Citizens of the United States captured in either neutral or rebel vessels are always to be detained, with the following exceptions:—If they are passengers only, have no interest in the vessel or cargo, have not been active in the rebellion, or engaged in supplying the insurgents with munitions of war, &c., and are loyally disposed, they may be released on taking the oath of allegiance. The same privilege may be allowed to any of the crew that are not seafaring men, of like antecedents, and who are loyally disposed.

"4. Pilots and seafaring men, excepting *bonâ fide* foreign subjects, captured in neutral vessels, are always to be detained. These are the principal instruments in maintaining the system of violating the

blockade, and it is important to hold them. Persons habitually engaged in violating the blockade, although they may not be serving on board the vessels, are of this class, and are to be likewise detained.

"5. When there is reason to doubt that those who claim to be foreign subjects are in reality such, they will be required to state under oath that they have never been naturalized in this country, have never exercised the privileges of a citizen thereof, by voting or otherwise, and have never been in the pay or employment of the insurgent, or so-called 'Confederate Government;' on their making such statement they may be released, provided you have not evidence of their having sworn falsely. The examination in case they are doubtful should be rigid.

"6. When the neutrality of a vessel is doubtful, or when a vessel claiming to be neutral is believed to be engaged in transporting supplies and munitions of war for the insurgent Government, foreign subjects captured in such vessels may be detained until the neutrality of the vessel is satisfactorily established. It is not advisable to detain such persons under this instruction, unless there is good ground for doubting the neutrality of the vessel.

"7. Parties who may be detained under the foregoing instructions are to be sent to a Northern port for safe custody, unless there is a suitable place for keeping them within the limits of your command, and the Department furnished with a memorandum in their cases respectively.

"Very respectfully, &c.
(Signed) "GIDEON WELLES,
"Secretary of the Navy."

An incident in the history of the blockade, which gave rise to a brief correspondence between the two Governments, may fitly close this chapter.

The *Emily St. Pierre*, a British ship, was captured on the 18th March, 1862 by a steamer detached from the blockading squadron off Charleston. She was on a voyage from Calcutta, with orders to make the coast of South Carolina, and ascertain whether it was still under blockade. If so, she was to go to New Brunswick; if not, she was to enter Charleston harbour. She had no contraband on board. When seized she was on the high seas, ten or twelve miles from shore, heading straight for Charleston. Her crew were taken out of her, except the master, cook, and steward, who were

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kept on board in order that their evidence might be forthcoming when she should be brought before a Prize Court. Two officers, with thirteen men, were put in charge of her, and ordered to carry her to Philadelphia. On the way thither, the three prisoners rose against their captors, disarmed and secured them, regained possession of the ship, and managed—with the help of three or four of the prize-crew, who volunteered to lend a hand rather than remain in confinement, but who were all landsmen—to carry her into Liverpool, after a voyage of thirty days, in which they encountered rough weather and many difficulties and hardships.

On being informed of these facts by the United States' Consul at Liverpool, Mr. Adams made a demand on the British Government for the restitution of the ship. He denounced the rescue as a fraudulent and an outrageous act, casting a stigma on the good faith of the British nation; he cited the condemnation of such a proceeding which was pronounced by Lord Stowell in the case of the *Catherine Elizabeth;*[1] and

[1] "If a neutral master attempts a rescue, he violates a duty which is imposed upon him by the law of nations, to submit to come in for inquiry as to the property of the ship or cargo; and if he violates that obligation by a recurrence to force, the consequence will undoubtedly reach the property of his owner; and it would, I think, extend also to the confiscation of the whole cargo entrusted to his care, and thus fraudulently attempted to be withdrawn from the rights of war."—(Rob., v, 232.)

The reasons for condemnation were more fully stated by the same great Judge in *The Dispatch* (Rob., iii, 278):—

"Taking it then to be a case of forcible rescue of a neutral ship from the hands of a lawful cruiser, the law is clear, and the principle of it is founded on the soundest maxims of justice and humanity. If neutral crews may be allowed to resort to violence to withdraw themselves out of the possession taken by a lawful cruiser, for the purpose of a legal inquiry, and may (as it has been termed) hustle them out of the command of the vessel, the whole business of the detention of neutral ships will become a scene of mutual hostility and contention; the crews of neutral ships must be guarded with all the severity and strictness practised upon actual prisoners of war, for the same measures

he insisted that, however it might be regarded by the Municipal Law of England, some jurisdiction must exist competent to redress so manifest a wrong.

On the part of the British Government it was answered that they had no power to take the vessel out of the possession of her owners, whose rights had never been extinguished by the sentence of a Prize Court. Had the rescue failed, there was no doubt that the attempt would have rendered her liable to condemnation; but Lord Stowell's judgment "furnished no authority for contending that the Municipal Law of a neutral country is under any obligation, or has any authority, to enforce, or to aid in enforcing, the right of the belligerent to capture—or, in other words, is empowered to exercise prize jurisdiction as between captors and neutrals." "You speak," continued Lord Russell, "of the rescue of the *Emily St. Pierre* as being a fraud by the law of nations. But, whether the act of rescue be viewed as one of fraud, or of force, or as partaking of both characters, the act was done only against the rights accruing to a belligerent, under the law of nations relating to war, and in violation of the law of war, which, whilst it permits the belligerent to exercise and enforce such rights against neutrals by the

of precaution and distrust will become equally necessary; the intercourse of nations neutral and friendly towards each other will be embittered by acts of hostility mutually committed by their subjects. At present, under the understanding of the law which now prevails, it is the duty of the cruiser to treat the crew of an apparently neutral ship, which he takes possession of for further inquiry into the real character of herself and her cargo, with all reasonable indulgence; and it is the duty of neutrals under that possession to take care that they do not put themselves in the condition of enemies by resorting to such conduct as can be justified only by the character of enemies. It is the law, and not the force of the parties, that must be looked to, as the redresser of wrongs that may have been done by the one to the other. I have no hesitation in pronouncing this ship and cargo liable to condemnation, on the ground of the parties having declared themselves enemies by this act of hostile opposition to lawful inquiry."

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peculiar and exceptional right of capture, at the same time leaves to the belligerent alone the duty, and confers upon him the power, of vindicating such rights and of enforcing such law. The same law not only does not require, but does not even permit, neutral nations to carry out belligerent rights. You allude to the conduct of the United States' Government in the case of the *Trent;* but the flagrant wrong done in that case was done by a naval officer of the United States; the prisoners whose release was demanded were in the direct custody and keeping of the Executive Government; and the Government of the United States had actually the power to deliver them up, and did deliver them up, to the British Government. But the *Emily St. Pierre* is not in the power of the Executive Government of this country; and the laws of England, as well as the law of nations, forbid the Executive Government from taking away that ship from its legal owners."[1]

This correspondence came to a somewhat abrupt conclusion, partly due, as it appears, to a curious discovery made at the American Legation. It was found that a claim resembling that which the United States were making against Great Britain had in the year 1800 been made by Great Britain against the United States, and that it had been refused on the very grounds which, when urged by Lord Russell, had proved so unsatisfactory to Mr. Adams.[2]

[1] *Earl Russell to Mr. Adams*, 24th May, 1862; 12th June, 1862.

[2] Lord Grenville's Instruction to Mr. Liston, and Mr. Pickering's reply, are given in *Parliamentary Paper, North America, No.* 4 (1863), pp. 138, 139. The answer of the American Secretary of State was as follows:—

"I have now the honour to state to you that while, by the law of nations, the right of a belligerent power to capture and detain the merchant vessels of neutrals, on just suspicion of having on board enemy's property, or of carrying to such an enemy any of the articles which are contraband of war, is unquestionable, no precedent is recol-

There can be no doubt that the American Government was right in 1800 and wrong in 1862, and the English Government wrong in 1800 and right in 1862. The enforcement of blockades is left, and rightly left, by the Law of Nations to the belligerent alone. They are enforced by the exercise of the belligerent right of capture; and this right is the weapon which International Law places in his hands for that express purpose. Capture is an act of force, which has to be sustained by force until the property in the vessel has been changed by a sentence of condemnation. If she escape meanwhile from the captor's hands, it is not for the neutral to restore her to him. Resistance or a rescue is, for the reasons given by Lord Stowell, a distinct offence, drawing after it a distinct and appropriate penalty—confiscation. But here again it is for the belligerent to inflict the penalty, and it is not the business of the neutral to help him to do this, either by recovering his prize for him or by treating the act as a crime.

lected, nor does any reason occur, which should require the neutral to exert its power in aid of the right of the belligerent nation in such captures and detentions. It is conceived that, after warning its citizens or subjects of the legal consequences of carrying enemy's property or contraband goods, nothing can be demanded of the sovereign of the neutral nation but to remain passive. If, however, in the present case, the British captors of the brigantine *Experience*, Hewit, master; the ship *Lucy*, James Conolly, master; and the brigantine *Fair Columbia*, Edward Carey, master, have any right to the possession of those American vessels or their cargoes, in consequence of their capture and detention, but which you state to have been rescued by their masters from the captors and carried into ports of the United States, the question is of a nature cognizable before the tribunals of justice, which are opened to hear the captors' complaints; and the proper officer will execute their decrees. You suggest that these rescues are an infringement of the law of nations. Permit me to assure you that any arguments which you shall offer to that point will receive a just attention."

CHAPTER XIII.

Trade in Munitions of War with North and South.—Anxiety of the Confederate Government to procure sea-going Ships of War.—Mission of Bullock and North, and their Operations in England.—Vigilance of the United States' Legation in London and of the Liverpool Consulate.—Case of the *Oreto* or *Florida*.—Case of the *Alabama*.—Subsequent Attempts; successful in the cases of the *Georgia* and *Shenandoah*, unsuccessful in others.—The *Alexandra*; the Ironclads; the *Rappahannock*.—Action of the British Government in each case.—Prosecutions under the Foreign Enlistment Act.

To the workshops of Europe,—and especially to its chief workshop, Great Britain,—both belligerents had recourse for the supplies of arms and munitions necessary to enable them to place great armies in the field.

"On the commencement of the war," says the *American Annual Cyclopædia for* 1861, "the United States' Government found itself scantily supplied with small-arms, the armouries in the Northern States having been in great part stripped, and the arms removed to the Southern States. The chief dependence for the supply of muskets was upon the Springfield Armoury and that at Harper's Ferry. The capacity of the few private armouries was only a few thousand muskets annually; and on the destruction of the arsenal and armoury at Harper's Ferry on the 19th of April, 1861, together with 15,000 muskets, to prevent their falling into the hands of the Confederates, the resources of the Government were seriously diminished. It was, no doubt, the want of arms that limited the call of the President for volunteers, on the 15th of April, to 75,000 men; and until muskets could be imported from

Europe many regiments were detained in their camps in the different States. Orders were sent abroad by the Governors of States, and many arms were imported at high prices, although inferior, most of them very much so, to those of American manufacture."[1] "Of the foreign arms imported, the best," continues the annalist, "are the Enfield rifles, made at the Government Armoury at Enfield, England." Many rifles were also imported from Prussia. The demands of the war, as it advanced, were met, in large measure, by the activity of private manufacturers in the Northern States; but the export of arms and military stores from Great Britain went on freely and without intermission as long as the contest lasted; and the supplies thus drawn by the Federal Government from this country appear to have considerably exceeded in quantity those obtained by the South.

There was at first, and probably for a considerable time, no want of arms in the Confederate States. The Federal arsenals and magazines in the South had all fallen into the hands of the State authorities, and had by them been transferred to the Confederate Government; and these had a little while before been filled to overflowing from the arsenals of the North by Mr. Floyd, who had not scrupled to use for this purpose the power entrusted to him as Secretary at War in Mr. Buchanan's Administration. As the war proceeded, and so long as it lasted, they obtained what supplies they could from the European market. But every cargo had to run the gauntlet of the blockade, except what could be transported overland from Mexico. The extent, therefore, to which exportation was possible must have been limited in proportion to the effectiveness of the blockade.[2]

[1] *American Annual Cyclopædia for* 1861, p. 28.

[2] Of the quantities really shipped to either North or South we have, so far as I am aware, no accurate account. The total value of arms and munitions of war shipped from this country, during the war

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An export trade, more or less considerable, in arms and munitions of war was carried on from this country to both the Northern and the Southern ports. Whether the goods were purchased in the English market by persons who came over for the purpose, or were shipped to order, or were consigned for sale in America on account of the shippers; whether the purchases were effected by agents for the two Governments respectively, or by private speculators; and whether those agents or speculators were American or English, firms trading at Liverpool or firms trading at New York or Charleston, I do not know, and it is absolutely immaterial to inquire. None of these circumstances could affect, to the slightest degree, the character of the transaction; nor was it the duty, or within the power, of the neutral Government to interfere with a sale and purchase conducted in one of these ways, more than with a sale and purchase effected in any other of them.

Nor is it material to know how much of the supplies

and in the years which immediately preceded and followed it, to the United States and to the "British West India Islands, &c.," were as follows:—

Years.	United States.	British West India Islands, &c.
	£	£
1860	45,076	6,050
1861	119,555	59,110
1862	999,197	367,578
1863	425,081	200,402
1864	36,802	74,983
1865	23,625	29,240
1866	82,345	4,795

These figures show the demands of the war. The increase in the West India trade was doubtless due to the activity of the blockade-runners. Shipments direct to any of the Southern ports would be included under the heading "United States," but these were probably inconsiderable.

A Customs Return moved for and presented to Parliament in 1864 states the aggregate value of the rifles, muskets, ordnance and ordnance stores, and percussion caps, shipped under those descriptions to Northern ports in 1861 at 20,386*l.*, and in 1862 at 550,136*l.* The shipments to

sent to either Northern or Southern ports was conveyed in American bottoms, and how much in English bottoms. Articles of military use, when transported over sea to the ports of either belligerent in neutral ships, are during the transit designated contraband, and may be captured under the neutral flag, the neutral carrier suffering the loss of his freight and getting no compensation for the interruption of his voyage and the breaking up of the cargo. In this case, both goods and carriage are obtained in the neutral country; in the other case (where the transportation is effected by merchantmen belonging to the belligerent), the neutral supplies the goods, but does not supply the carriage. This, and this only, is the real difference between the two classes of transactions considered in themselves: and International Law, when it "prohibits" (as the phrase is) the carriage of contraband, declares in effect that the belligerent importer shall not, by having the goods conveyed to him under a neutral

Southern ports are valued in the return at 1,850*l.* in the former year, and *nil* in the latter. No distinction is made between Northern and Southern ports as such; but the names of the ports are given under the general title "America."

Mr. Davis, in his Message of 12th January, 1863, gave a glowing account of the resources of the Confederacy:—"Our armies are larger, better disciplined, and more thoroughly armed and equipped, than at any period of the war; the energies of a whole nation, devoted to the single object of success in this war, have accomplished marvels, and many of those trials have by a beneficent Providence been converted into blessings. . . . The injuries resulting from the interruption of foreign commerce have received compensation by the developments of our internal resources. Cannon crown our fortresses that were cast from the proceeds of mines opened and furnaces built during the war. Our mountain caves yield much of the nitre for the manufacture of powder, and promise increase of product. From our own foundries and laboratories, from our own armouries and workshops, we derive in a great measure the warlike material, the ordnance and ordnance stores, which are expended so profusely in the numerous and desperate engagements that rapidly succeed each other. Cotton and woollen fabrics, shoes and harness, waggons and gun-carriages, are produced in daily increasing quantities by the factories springing into existence."

The need for arms appears to have become urgent at the beginning of 1865.

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flag, escape the risk of having them captured at sea; and that the neutral who chooses to undertake the conveyance must hazard all the losses which may attend on such an adventure. Russia, if she be at war with France, cannot be prevented from getting guns from private manufacturers at Berlin across the Prussian frontier. But if she gets them from England, French cruisers may seize them anywhere on the high seas, whether under the Russian or under the English flag: the English shipowner must run the risk of that: and, if he be the owner of both ship and goods, he may lose his ship into the bargain. To the people of the South it was almost a matter of necessity that the bulk of what they bought in Europe should be conveyed to them in neutral vessels, because their own mercantile marine was insignificant; to the people of the North it was in each particular transaction a mere question of price and convenience, which the exporter decided for himself as he judged best for his own interest. It is not, however, more unlawful to convey munitions of war to a belligerent who has few or no merchant-ships of his own than to a belligerent who has many—to a belligerent who is weak at sea than to one who is powerful; nor, where a great disparity of force renders the business of transportation difficult and precarious on one side, and safe and easy on the other, is the transaction which is difficult and precarious more unlawful than that which is safe and easy. The stronger belligerent, in spite of all that the neutral trader can do, has the advantage of his strength, and the weaker suffers the disadvantage of his inferiority; but neutral Governments are not called upon to interdict to the weaker that which they permit to the stronger, and they would cease to be neutral if they did. The overwhelming maritime preponderance of the Union enabled it during the late war to blockade, more or less effectively, all the Southern coasts; hence, in carrying on this trade with the South, the "offence," as a Prize Court would say, of breaking a blockade was superadded to that of conveying contra-

band—which means that the neutral trader was doing two things, each of which by itself would have exposed him to a penalty. But the neutral Government, which is not bound to prevent blockade-running and the export of contraband when distinct transactions, is under no greater obligation to prevent them when combined in one transaction.

I state these simple propositions as plainly as I can, because there is reason to think that they were not, and are not now, clearly apprehended by the Government of the United States. In the tissue of complaints which that Government has again and again presented to the Government of Great Britain, blockade-running and the export of contraband to the South are large ingredients, and hold a conspicuous place. That Great Britain did not put a stop to these enterprises, while permitting the export of arms to the North, has been reckoned a grievance by the United States, and employed to swell their list of grievances; and the only known facts alleged in support of this contention have been the facts that the Southern States were in rebellion, and the Southern ports under blockade.[1]

[1] The latest official statement, I believe, previous to the war, of the American view and practice in this matter is to be found in President Pierce's Message of December 1854:—

"The laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles contraband of war, or to take munitions of war or soldiers on board their private ships for transportation; and although in so doing the individual citizen exposes his property to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the Government. Thus, during the progress of the present war in Europe, our citizens have without national responsibility therefor sold gunpowder and arms to all buyers, regardless of the destination of those articles. Our merchantmen have been, and still continue to be, largely employed by Great Britain and France in transporting troops, provisions, and munitions of war, to the principal seat of military operations, and in bringing home the sick and wounded soldiers; but such use of our mercantile marine is not interdicted either by the international or by our municipal law, and, therefore, does not compromise our neutral relations with Russia."

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Among the most pressing needs of the Confederates was that of sea-going ships capable of being used for war. Such vessels as they possessed were, as we have seen, for the most part very small. There was probably not one of these which could have ventured to engage a Federal cruiser of any class without certain destruction. In coast warfare they were able to achieve one or two brilliant though unprofitable successes. But the construction of a large sea-going steamer seems to have been beyond their power; their only ships were such as had fallen into their hands; and they either had not the materials and machinery for turning out marine steam-engines, or were unable to use them.[1]

[1] "Workshops and foundries were improvised, wherever it was possible to establish them; but the great difficulty was the want of the requisite heavy machinery. We had not the means, in the entire Confederacy, of turning out a complete steam-engine of any size; and many of our naval disasters are attributable to this deficiency. Well-constructed steamers, that did credit to the Navy Department and its agents, were forced to put to sea, and to move about upon our sounds and harbours, with engines disproportioned to their size, and incapable of driving them at a speed greater than five miles the hour.

"The casting of cannon, and the manufacture of small arms, were also undertaken by the Secretary, under the direction of skilful officers, and prosecuted to considerable efficiency. But it took time to accomplish all these things. Before a ship could be constructed, it was necessary to hunt up the requisite timber, and transport it considerable distances. Her armour, if she was to be armoured, was to be rolled also at a distance, and transported over long lines of railroad, piecemeal; her cordage was to be picked up at one place, and her sails and hammocks at another. I speak knowingly on this subject, as I had had experience of many of the difficulties I mention, in fitting out the *Sumter* in New Orleans. I was two months in preparing this small ship for sea, practising, all the while, every possible diligence and contrivance. The Secretary had other difficulties to contend with. By the time he had gotten many of his ship-yards well established, and ships well on their way to completion, the enemy would threaten the *locus in quo* by land, and either compel him to attempt to remove everything movable, in great haste and at great loss, or destroy it, to prevent it from falling into the hands of the enemy. Many fine ships were, in this way, burned on the very eve of completion."—Semmes, *My Adventures Afloat*, p. 366.

Yet the few cruisers which the Confederate Government were able to send to sea performed with considerable success the service for which they were designed; and the Southern ports, though ingress and egress were alike hazardous, were far from being completely closed. The *Sumter*, as we have already seen, put to sea from the Passes of the Mississippi; the *Nashville* issued from Charleston in October 1861, ran into Beaufort in February 1862, showing Confederate colours when within musket-range of the blockading steamer, and ran out again in March under the fire of the two which then guarded the channel. The *Florida*, as we shall see hereafter, entered and left Mobile in the teeth of the blockade. Even before the end of 1861, the rate of insurance on American shipping had risen four or five per cent., and shippers had begun to resort to the device, familiar in maritime war, of protecting or attempting to protect their cargoes by certificates of neutral ownership.

In the winter of 1861-62, two Confederate officers had been sent by their Government to Europe, with instructions to procure several steamers, to be purchased in the market or built to order as circumstances might determine. They were warned to proceed with caution, it being probably well known that England had a neutrality law differing very slightly from that of the United States. Captain Bullock, the more prominent of these two agents, a Georgian who had been in the Federal Navy and afterwards in the steam-packet service, took up his abode near Liverpool. It need hardly be said that of him, his associate, or his instructions, nothing could well have been known to the British Government.

The Government of the United States possessed in its Consulates, and especially in the Consulate at Liverpool, posts of observation which appear to have been occupied by zealous and intelligent men. Whatever

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occurred in the port of a nature to awake suspicion, the Consul reported to Mr. Adams; and Mr. Adams, if he thought it of any consequence, brought it to the notice of Lord Russell. On the 15th August, 1861, the Foreign Secretary's attention was thus directed to a steamer, the *Bermuda*, alleged to be fitting out for the Confederate Government at Hartlepool. She proved, however, on investigation, to be intended only for blockade-running. On the 18th February, 1862, a like representation was received respecting another steamer, the *Oreto*, at Liverpool, and was referred on the same day to the Treasury, to be made the subject of inquiry by the officers of the Board of Customs. They reported that she was intended for an English mercantile house at Palermo, and that she was believed by the firm of engineers to whose order she had been built to be destined for that place; that she was pierced for four guns, but not fitted for the reception of guns, and that she had nothing on board but coals and ballast. Orders were given that she should be vigilantly watched, and that, if any armament prohibited by the Foreign Enlistment Act should be discovered, she should be detained. She was registered on the 3rd March in the name of a merchant then at Liverpool, a member of the Sicilian firm, and cleared on the following day for "Palermo, the Mediterranean, and Jamaica" in ballast, but did not sail till the 22nd, when she left the Mersey with a crew of fifty men, and nothing on board but ordinary ship's stores. Here, for the present, she disappears from view, and for three months nothing more is heard of her. No evidence (beyond vague hearsay and surmise) respecting the construction, destination, or ownership of the vessel appears to have been produced to Government or any of its officers before she sailed.

On the 24th June, 1862, Lord Russell was apprised by Mr. Adams "that a new and still more powerful war-steamer was nearly ready for departure from the port of

Liverpool on the same errand" as the *Oreto*, which he believed to be then not at Palermo but at Nassau, completing her armament for the purpose of making war against the United States. "This vessel has been built and launched from the dockyard of persons one of whom is now sitting as a member of the House of Commons, and is fitting out for the especial and manifest object of carrying on hostilities by sea. It is about to be commanded by one of the insurgent agents, the same who sailed in the *Oreto*. The parties engaged in the enterprise are persons well known at Liverpool to be agents and officers of the insurgents in the United States." [1]

Mr. Adams sent at the same time, as an inclosure, the following letter, from which his information had been derived:—

Mr. Dudley to Mr. Adams.

"Sir, "*United States' Consulate, Liverpool, June* 21, 1862.

"The gun-boat now being built by the Messrs. Laird and Co., at Birkenhead, opposite Liverpool, and which I mentioned to you in a previous despatch, is intended for the so-called Confederate Government in the Southern States. The evidence I have is entirely conclusive to my mind. I do not think there is the least room for doubt about it. Beauforth and Caddy, two of the officers from the privateer *Sumter*, stated that this vessel was being built for the Confederate States. The foreman in Messrs. Laird's yard says she is the sister to the gun-boat *Oreto*, and has been built for the same parties and for the same purpose; when pressed for a further explanation, he stated that she was to be a privateer for the 'Southern Government in the United States.' The captain and officers of the steamer *Julie Usher* now at Liverpool, and which is loaded to run the blockade, state that this gun-boat is for the Confederates, and is to be commanded by Captain Bullock.

"The strictest watch is kept over this vessel; no person except those immediately engaged upon her is admitted in the yard. On the occasion of the trial trip made last Thursday week no one was admitted without a pass, and these passes were issued to but few persons, and those who are known here as active Secessionists engaged in sending aid and relief to the rebels.

"I understand that her armament is to consist of eleven guns, and that she is to enter at once, as soon as she leaves this port, upon her business as a privateer.

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[1] *Mr. Adams to Earl Russell*, 23rd June, 1862.

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"The vessel is very nearly completed; she has had her first trial trip. This trial was successful, and entirely satisfactory to the persons who are superintending her construction. She will be finished in nine or ten days. A part of her powder canisters, which are to number 200, and are of a new patent, made of copper with screw tops, are on board the vessel; the others are to be delivered in a few days. No pains or expense have been spared in her construction. Her engines are on the oscillating principle and are 350 horse-power. She measures 1,050 tons burthen, and will draw fourteen feet of water when loaded. Her screw or fan works in a solid brass frame casting, weighing near two tons, and is so constructed as to be lifted from the water by steam-power. The platforms and gun carriages are now being constructed.

"When completed and armed she will be a most formidable and dangerous craft, and, if not prevented from going to sea, will do much mischief to our commerce. The persons engaged in her construction say that no better vessel of her class was ever built.

"I have, &c.

(Signed) "THOMAS H. DUDLEY."

These letters were on the 25th referred to the Treasury; and on the 1st July the Commissioners of Customs reported as follows:—

The Commissioners of Customs to the Lords Commissioners of the Treasury.

"*Custom House, July* 1, 1862.

"Your Lordships having referred to us the annexed letter from Mr. Hammond, Under-Secretary of State for Foreign Affairs, transmitting, by desire of Earl Russell, copy of a letter from the United States' Minister at this Court, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing copy of a letter from the United States' Consul at that port, reporting the result of his investigation into the matter, and requesting that immediate inquiries may be made respecting this vessel, and such steps taken as may be right and proper;

"We report—

"That immediately on receipt of your Lordship's reference we forwarded the papers to our Collector at Liverpool for his special inquiry and report, and we learn from his reply that the fitting-out of the vessel has not escaped the notice of the officers of this revenue, but that as yet nothing has transpired concerning her which has appeared to demand a special Report.

"We are informed that the officers have at all times free access to the building-yards of the Messrs. Laird at Birkenhead, where the vessel is lying, and that there has been no attempt on the part of her builders to disguise, what is most apparent, that she is intended for a

ship-of-war; and one of the Surveyors in the service of this revenue, who had been directed by the Collector personally to inspect the vessel, has stated that the description of her in the communication of the United States' Consul is correct, with the exception that her engines are not constructed on the oscillating principle.

"Her dimensions are as follows:—Length, 211 feet 6 inches; breadth, 31 feet 8 inches; depth, 17 feet 8 inches; and her gross tonnage by the present rule of measurement is 682·31 tons.

"The Surveyor has further stated that she has several powder-canisters on board, but as yet neither guns nor carriages, and that the current report in regard to the vessel is that she has been built for a foreign Government, which is not denied by the Messrs. Laird, with whom the Surveyor has conferred; but they do not appear disposed to reply to any questions respecting the destination of the vessel after she leaves Liverpool, and the officers have no other reliable source of information on that point. And having referred the matter to our Solicitor, he has reported his opinion that at present there is not sufficient ground to warrant the detention of the vessel or any interference on the part of this Department, in which Report we beg to express our concurrence.

"And with reference to the statement of the United States' Consul, that the evidence he has in regard to this vessel being intended for the so-called Confederate Government in the Southern States is entirely conclusive to his mind, we would observe that, inasmuch as the officers of Customs at Liverpool would not be justified in taking any steps against the vessel unless sufficient evidence to warrant her detention should be laid before them, the proper course would be for the Consul to submit such evidence as he possesses to the Collector at that port, who would thereupon take such measures as the provisions of the Foreign Enlistment Act would require. Without the production of full and sufficient evidence to justify their proceedings, the seizing officers might entail on themselves and on the Government very serious consequences.

"We beg to add that the officers at Liverpool will keep a strict watch on the vessel, and that any further information that may be obtained concerning her will be forthwith reported.

(Signed) "Thos. F. Fremantle.
"Grenville C. L. Berkeley."

A copy of this report was on the 4th July sent by Lord Russell to Mr. Adams. "In accordance therewith," wrote Lord Russell, "I would beg leave to suggest that you should instruct the United States' Consul at Liverpool to submit to the Collector of Customs at that port such evidence as he may possess tending to show

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that his suspicions as to the destination of the vessel in question are well founded."

Mr. Adams, on the 7th, promised to act on this suggestion, and on the 10th the Collector received from Mr. Dudley a letter stating various circumstances, all leading to the conclusion that the vessel was intended for war and for the service of the Confederate States. His information, however, rested almost entirely on hearsay statements, alleged to have been made either by persons whom he did not name, or by others of whose whereabouts he was ignorant. "The information," he added, "on which I have formed an undoubting conviction that this vessel is being fitted out for the so-called Confederate Government, and is intended to cruise against the commerce of the United States, has come to me from a variety of circumstances, and I have detailed it to you as far as practicable. I have given you the names of persons making the statements, but as the information in most cases is given to me by persons out of friendly feeling to the United States, and in strict confidence, I cannot state the names of my informants; but what I have stated is of such a character that little inquiry will confirm its truth."

The Collector on the same day acknowledged the receipt of this letter. "I may observe, however," he added, "that I am respectfully of opinion the statement made by you is not such as could be acted upon by the officers of this revenue, unless legally substantiated by evidence." On the same day also (the 10th July) he transmitted it to the Commissioners of Customs, who consulted their legal adviser, and on the 15th informed the Collector that there "does not appear to be *primâ facie* proof sufficient in the statement of the Consul to justify the seizure of the vessel, and you are to apprise the Consul accordingly."

On the 21st July the Consul, accompanied by his

solicitor, applied in person to the Collector, and requested him to seize the vessel, placing in his hands at the same time six affidavits, one made by the Consul himself, the five others by five persons who were in attendance.[1] The Collector, by that night's post, wrote to the Commissioners, forwarding the affidavits, and asking that he might be instructed by telegraph how to act, "as the ship appears to be ready for sea, and may leave any hour she pleases." She was now in fact out of her builders' hands, having been moved on the 12th from their private graving dock to the Great Float public dock at Birkenhead. Here she was being coaled and provisioned. She was still completely unarmed; she had on board no guns or carriages, nor were her platforms fitted to the deck.[2]

On the 22nd July the Commissioners wrote to the Collector:—

"Sir,

"Having considered your Report of the 21st instant, No. 1200, stating, with reference to previous correspondence which has taken place on the subject of a gun-boat which is being fitted out by Messrs. Laird, of Birkenhead, that the United States' Consul, accompanied by his solicitor, has attended at the Custom-house with certain witnesses, whose affidavits you have taken and have submitted for our consideration, and has requested that the vessel may be seized, under the provisions of the Foreign Enlistment Act, upon the ground that the evidence adduced affords proof that she is being fitted out for the Government of the Confederate States of America;

"We acquaint you that we have communicated with our solicitor

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[1] These affidavits, with others subsequently added, will be found in the Note at the end of this Chapter.

[2] In an affidavit made in 1863 by a man who sailed in the ship as paymaster it is said:—

"When the vessel sailed from Liverpool she had shot racks fitted in the usual places; she had sockets in her decks, and the pins which held fast frames on carriages for the pivot guns, and breaching bolts. These had been placed in by the builders of the vessel, Messrs. Laird and Co. She was also full of provisions and stores enough for four months' cruise. When she sailed she had beds, bedding, cooking utensils, and mess utensils, for 100 men, and powder tanks fitted in."—*Affidavit of Clarence Yonge*, 2nd April, 1863.

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on the subject, who has advised us, that the evidence submitted is not sufficient to justify any steps being taken against the vessel under either the 6th or 7th sect. of Act 59 Geo. 3, cap. 69, and you are to govern yourself accordingly.

"The solicitor has, however, stated, that if there should be sufficient evidence to satisfy a Court, of enlistment of individuals, they would be liable to pecuniary penalties, for security of which, if recovered, this Department might detain the ship until those penalties are satisfied, or good bail given, but there is not sufficient evidence to require the Customs to prosecute; it is, however, competent for the United States' Consul, or any other person to do so, at their own risk, if they see fit.

(Signed) "T. F. Fremantle.
"G. C. L. Berkeley."

Mr. Adams had on the 22nd sent to the Foreign Office copies of the affidavits which had been laid before the Board of Customs. On the 23rd Mr. Squarey, the solicitor on whose advice Consul Dudley had acted, obtained an interview with Mr. Layard, the Under-Secretary of State for the Foreign Department, and appears, from a report of the conversation which he sent to Mr. Adams, to have represented the urgency of the case, and pressed for a speedy decision.

On the same day (the 23rd July) two further affidavits were submitted by Mr. Squarey to the Board of Customs.[1] With them he sent a copy of an Opinion which he had obtained from an eminent Counsel (Mr. Collier) before whom all the evidence had been laid, to the effect that an infringement of the Foreign Enlistment Act was proved, and that the Collector of Customs would be justified in detaining the vessel, and was indeed bound to detain her. He asked that the question might be reconsidered on this additional evidence. "The gun-boat," he added, "now lies in Birkenhead docks, ready for sea in all respects, with a crew of fifty men on board. She may sail at any time, and I trust the urgency of the case will excuse the course I have adopted of

[1] See Note at the end of this Chapter.

sending these papers direct to the Board instead of transmitting them through the Collector at Liverpool, and the request, which I now venture to make, that the matter may receive immediate attention."

On the 24th, Mr. Adams sent to Earl Russell copies of the two additional affidavits, and of Mr. Collier's Opinion. These papers do not appear to have been received until Saturday the 26th; but the delay is immaterial, since the same information had been placed, as we have seen, in the hands of the Commissioners of Customs three days before, and must therefore have found its way to the Foreign Office.

A ninth affidavit, sworn by a man named Redden, was received at the Customs on the 25th, and at the Foreign Office on the following day.[1]

On Tuesday the 29th, the Law Officers, before whom all the evidence had been laid as it reached the Foreign Office, reported to the Secretary of State for Foreign Affairs their opinion that the vessel should be detained.

But on the afternoon of the 28th the "290," as she was then called (having received no name and being known only by the number she bore in the builders' yard), had left the dock in which she lay, had anchored for the night off the public landing-stage at Liverpool,[2]

[1] See Note at the end of this Chapter.

[2] "We sailed from Liverpool on the 29th day of July, 1862. This was four days sooner than we expected to sail. The reason for our sailing at this time before we contemplated, was on account of information which we had received that proceedings were being commenced to stop the vessel from sailing. Captain Bullock sent Lieutenant Low to me on Sunday evening, the 27th of July, to say that I must be at Fraser, Trenholm, and Co.'s office early next morning. The next morning I arrived at half-past 9 o'clock. Captain Butcher came in and told me the ship, which at that time was called the '290,' would sail the next day, and that he wanted me to go with him. In a few minutes Captain Bullock came in and told me he wanted me to go to sea at a minute's notice; that they were going to send her right out. . . . . The ladies and passengers were taken on board as a blind."—*Affidavit of Clarence Yonge.*

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and next morning (the 29th July) went to sea without a clearance, ostensibly on a trial trip, carrying with her, in order to assist this pretence, a party of visitors, who were sent back at the mouth of the river, and amongst whom were several ladies. She proceeded first to Moelfra Bay on the coast of Anglesea, where she rode at anchor until two or three o'clock on the morning of Thursday the 31st, without communicating with the shore, and took on board about forty men, who had been sent after her from Liverpool in a tug. The solicitors of the American Consulate had written on the 28th to the Board of Customs to say that they had every reason to believe that she would sail on the next day; but this letter did not reach London till the morning of the 29th. On that morning they telegraphed the information that she had actually sailed; and by the evening's post they wrote that they had every reason to believe that she had gone to Queenstown. The master of the tug which accompanied the "290" down the Mersey returned to Liverpool in the evening; and it appears that he reported his belief that she was cruising off Point Lynas, a headland west of Moelfra. This scrap of information reached the Board of Customs on the 31st. Telegrams were sent from the Board of Customs to Beaumaris, Holyhead, and Cork, directing that she should be seized, should she put in at any of those places,[1] and a copy of the Law Officers' opinion was despatched by the Colonial Office to the Governor

[1] The dates are stated in the following Note, published in the *Customs Correspondence* relating to the *Alabama*:—

"31st July 1862, at about Half-past Seven P.M.

"Telegrams were sent to the Collectors at Liverpool and Cork, pursuant to Treasury Order, dated 31st July, to seize the gun-boat ('290') should she be within either of those ports.

"Similar telegrams to the officers at Beaumaris and Holyhead were sent on the morning of the 1st August. They were not sent on the 31st July, the telegraph offices to those districts being closed.

"And on the 2nd August a letter was also sent to the Collector at Cork, to detain the vessel should she arrive at Queenstown."

of the Bahamas, whither it was thought likely she might bend her course. But she left the roads at Moelfra more than twenty-four hours before the telegram reached Beaumaris, and she did not go to Nassau. She made straight for Terceira in the Azores, and arrived safely in the harbour of Porto Praya.

Up to this time she was completely unarmed. She had not on board, when she left the Mersey, "so much as a signal gun or a musket,"[1] nor had she taken in any equipment at Moelfra. But she was met at Terceira by the sailing-barque *Agrippina*, from London, and was joined a little later by the steamer *Bahama*, which had cleared from Liverpool for Nassau a fortnight after the departure of the "290." These two vessels between them brought her armament, all the clothing for her crew, and an additional supply of coal, and the *Bahama* likewise brought her future captain and officers. Captain Semmes, formerly of the *Sumter*, had been appointed as early as the 2nd May to the command of the new ship: he was then at Nassau, and, finding her gone on his return to Liverpool, had followed her in the *Bahama*. The transhipment was effected partly at Porto Praya, partly in the bays of East and West Angra on the southern coast of the island, and partly at sea, just outside of the territorial line. What occurred when the operation was complete is thus described by a seaman who had gone out in the "290":—

"On the Sunday afternoon following,[2] Captain Semmes called all hands aft, and the Confederate flag was hoisted, the band playing 'Dixie's Land.' Captain Semmes addressed the men, and said he was deranged in his mind to see his country going to ruin, and he had to steal out of Liverpool like a thief. That instead of them watching him he was now going after them. He wanted all of us to join him,—that he was going to sink, burn, and destroy all his enemy's property, and that any that went with him was entitled to two-

[1] Surveyor's Report, 30th July, 1862.

[2] 24th August, 1862.

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twentieths' prize money; it did not matter whether the prize was sunk, or burned, or sold, the prize money was to be paid. That there were only four or five Northern ships that he was afraid of. He said that he did not want any to go that was not willing to fight, and there was a steamer alongside to take them back if they were not willing.

"The vessel was all this time steaming to sea, with the *Bahama* at a short distance. Forty-eight men, most of them firemen, refused to go, and, an hour afterwards, were put on board the *Bahama*. I refused to go, and came back with the rest in the *Bahama*. Captain Butcher, Captain Bullock, and all the English engineers came with us and landed here on Monday morning. When we left the *Alabama* she was all ready for fighting, and steering to sea. I heard Captain Semmes say he was going to cruise in the track of the ships going from New York to Liverpool, and Liverpool to New York. The *Alabama* never steamed while I was in her more than eleven knots, and cannot make any more. We signed articles while in Moelfra Bay for Nassau or an intermediate port. Captain Butcher got us to sign."[1]

Captain Semmes himself writes as follows respecting the enlistment of the crew:—

"I had as yet no enlisted crew, and this thought gave me some anxiety. All the men on board the *Alabama*, as well as those who had come out with me on board the *Bahama*, had been brought thus far under articles of agreement that were no longer obligatory. Some of them had been shipped for one voyage, and some for another, but none of them for service on board a Confederate cruiser. This was done to avoid a breach of the British Foreign Enlistment Act; they had of course been undeceived from the day of their departure from Liverpool. They knew that they were to be released from the contracts they had made; but I could not know how many of them would engage with me for the *Alabama*. . . . . .

"The *Alabama* had brought out from the Mersey about sixty men, and the *Bahama* brought about thirty more. I got eighty of these ninety men, and felt very much relieved in consequence."[2]

He elsewhere describes his crew as having been "picked up promiscuously about the streets of Liverpool." Four of them were afterwards traced as belonging to the Naval Reserve, and their names were struck off the list.

[1] *Affidavit of Henry Redden, Boatswain's Mate.*

[2] Semmes, *My Adventures Afloat*, p. 408.

This account is substantially corroborated by the affidavit afterwards sworn by Yonge, the paymaster, a hostile witness :—

"Captain Bullock wrote a letter of instructions to me before we left Liverpool, directing me to circulate freely among the men, and induce them to go on the vessel after we got to Terceira. I accordingly did circulate among the men on our way out, and persuaded them to join the vessel after we should get to Terceira. Low did the same."

Referring to the 24th August, he adds :—

"I had two sets of articles prepared, one for men shipping for a limited time, the other for those willing to go during the war. The articles were then re-signed, while the vessel was in Portuguese waters but under the Confederate flag."

Yonge was dismissed from the ship at Jamaica. He afterwards came to England and furnished evidence to the American Legation.

Mr. Adams had at the beginning of July ordered the *Tuscarora*, then stationed at Gibraltar, to England, in the hope, should other means fail, of intercepting the obnoxious steamer at sea. Captain Craven reached Southampton as early as the 9th July, and received all the information that Mr. Adams could give him. He continued there, making repairs, till the 29th; when, on being apprised that the *Alabama* had sailed, he weighed anchor hastily and went to Queenstown. Here, on the 31st, he received information from Mr. Adams by letter and telegraph that she was believed to be off Point Lynas. He does not appear, however, to have put to sea till the following day, when he "sailed up St. George's Channel," without descrying the object of his search. His ill-success drew on him a sharp reproof from the Minister. "It may have been of use to the *Tuscarora* to have obtained repairs at Southampton to put her in seaworthy condition. But, had I imagined the Captain did not intend to try the sea, I should not have taken the responsibility of calling him from his station. I can

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only say that I shall not attempt anything of the kind again."[1]

This is the history of the building and fitting-out of the *Alabama*. We will now return to the *Oreto*.

The *Oreto*, as we have seen, sailed from Liverpool on the 22nd March, with a clearance for Sicily. Early in April she made her appearance at New Providence, where she remained nearly four months, lying during the earlier part of that time at an anchorage eight or nine miles from Nassau. The United States' Consul complained to the Governor that she was fitting out for war—which appears to have been a mistake; the senior naval officer on the station was directed to keep watch on her movements, and she was more than once examined. She had been consigned, "as a merchant ship," by Fraser, Trenholm, and Co. to their correspondents at Nassau; and application was made on their behalf for leave to ship a cargo; but no cargo was taken on board, and she finally cleared in ballast for Havana. Her crew, however, refused to weigh anchor, insisting that they had been deceived; the vessel, they said, not having touched at Palermo, there had been a deviation, which entitled them to be discharged, and they would not sail unless guaranteed against Federal cruisers. They were summoned before a magistrate and obtained their discharge. The naval officers who examined her reported that her construction and internal fittings were clearly those of a ship-of-war; and the Governor, yielding to the representations of Captain Hickley, of Her Majesty's ship *Greyhound*, ultimately directed that she should be seized and libelled in the Vice-Admiralty Court of the colony for a violation of the Foreign Enlistment Act. This occurred in June. On the 2nd August, after a long trial, the Judge of the Court decreed the release of the ship, on the ground that no proof had been given of any

[1] *Mr. Adams to Captain Craven*, 6th August, 1862.

violation of the Act within the limits of his jurisdiction, and no evidence produced connecting her with the Confederate Government.[1] A second crew was shipped, but these also refused to go, and she went to sea at last with five firemen and fourteen deck hands.

The *Oreto* had in fact been ordered by Bullock, as agent for the Confederate Government, from one shipbuilding firm, as the *Alabama* had been ordered by him from another; and Captain Maffit, the officer appointed to command her, was all this while at Nassau, awaiting the result of the trial. Having at last got her to sea, he proceeded, not to Havana, but to an islet due south of New Providence, one of that multitude of limestone rocks—mostly desolate and uninhabited, and called (from the Spanish word *cayo*) "cays," or "keys"—with which these seas are studded, and the principal cluster of which forms the Bahamas. At Green Key he took guns and stores on board from a schooner sent to meet him there by a Confederate agent at Nassau, hoisted the Confederate flag, and gave his steamer the name of the *Florida*. But his scanty crew was in a few days reduced by yellow fever to one fireman and four deck hands; with his vessel thus completely disabled he made his way to Cardenas in Cuba, and thence to Havana; and on the 4th September ran into Mobile, in broad daylight, through the fire of three blockading ships, without returning a shot, and with only a steersman on deck; his little handful of men sent below, and himself so weakened by sickness as to be unable to move without assistance. The officer commanding the blockading force was dismissed the service for this mishap, which he attributed to the superior speed of the Confederate ship, and (with more justice) to

[1] The only acts proved were the putting of straps on some spare blocks, and the putting on board of some shell in boxes; but these had been re-landed before the seizure. It was sworn that, as regarded her fittings, no alteration had been made since she left Liverpool.

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the "unparalleled audacity" of the Confederate sailor.[1] The *Florida* remained in Mobile till the 16th January, 1863, when her fearless commander, his ship now in fighting condition, put to sea and commenced a cruise, to which we may have occasion to refer hereafter.

I have stated with some minuteness the circumstances of these two cases, on account of the importance which has been assigned to them—an importance which they will hardly retain in the history of International Law—and because we are in possession of the facts. They are in truth, however, only two out of a long list of cases, in which the British Government was called upon to inquire or to act, and all of which ought to be taken into account in forming a judgment of the general conduct of that Government. Of the remainder it will be enough to give a concise account in the order of time. I shall take this account, in great measure, from a memorandum furnished to Mr. Adams on the 3rd November, 1865, and included in the papers which have been presented to Parliament, making additions to it as regards the more important cases. As to some, indeed, it is our only source of information.

Ships which were alleged or suspected to be Fitting-out for War.

November 16, 1862.—The *Hector*. Mr. Adams's application referred to the Admiralty, November 18. This was an inquiry whether the *Hector* was building for Her

[1] The *Florida* flew the British flag till she was fired at, when she hauled it down, and (according to Captain Semmes's account) hoisted Confederate colours. The unlucky Captain of the *Oneida* said in his report that his enemy "had no flag to fight under." The discrepancy is immaterial, since she did not attempt to fight; the only rule being that a ship may not fire without showing her true colours. The *Oneida* fired her broadside when within a few yards of the *Florida*. The latter was much shattered when she gained Mobile.

Majesty's Government. On reference to the Admiralty, it was answered in the affirmative.

January 16, 1863.—The *Georgiana*. Referred to Treasury and Home Office, January 17. Ship said to be fitting at Liverpool for the Confederates. Mr. Adams could not divulge the authority on which this statement was made. Reports from the Customs, sent to Mr. Adams on the 18th, 19th, and 27th of January, tended to show that she was not designed for war. She sailed on the 21st January for Nassau, and on the 19th March was wrecked in attempting to enter Charleston Harbour.

March 26, 1863.—The *Phantom* and the *Southerner*. Referred to Treasury and Home Office, March 27; to the Law Officers of the Crown, June 2.

The *Phantom* was fitting at Liverpool, the *Southerner* at Stockton-on-Tees. Both proved to be intended for blockade-runners.

March 30, 1863.—The *Alexandra*. Referred to Treasury, Home Office, and Law Officers, March 31.

Reports were received from the Treasury on the 31st March, and from the Home Office on the 1st April. On the 4th April the Law Officers advised seizure, and she was seized on the following day.

This vessel was built at Liverpool by Miller and Co., the builders of the *Florida*, nominally for Fraser, Trenholm, and Co., a firm with the name of which the reader is by this time familiar. She was launched in March, and immediately taken to a public dock for completion. According to the evidence produced at the trial, she was apparently built for war, and not for commerce, but might have been used as a yacht.

At the trial, which took place before the Chief Baron of the Court of Exchequer on an information by the Attorney-General, the jury found for the defendants.[1]

[1] The evidence as to the build and fittings of the ship proved that she was strongly built, principally of teak wood; her beams and hatches, in strength and distance apart, were greater than those in

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An application subsequently made for a new trial, on the two grounds that the Judge had misdirected the jury, and that the verdict was against the evidence, failed, the four Judges composing the Court being equally divided. The Crown appealed against this decision to the Exchequer Chamber, but failed here also, that Court having no power to entertain the appeal. The costs and damages, fixed by arrangement at 3,700*l.*, were paid by the Crown.

The vessel herself, having been released, was sent to Nassau, where she was again libelled in the Vice-Admiralty Court of the Bahamas, and a second time released. In consequence, as it appears, of this deten-

merchant-vessels; the length and breadth of her hatches were less than the length and breadth of hatches in merchant-vessels; her bulwarks were strong and low, and her upper works were of pitch pine. At the time of her seizure workmen were employed in fitting her with stanchions for hammock-nettings; iron stanchions were fitted in the hold; her three masts were up, and had lightning conductors on each of them; she was provided with a cooking apparatus for 150 or 200 people; she had complete accommodation for men and officers; she had only stowage room sufficient for her crew, supposing them to be thirty-two men; and she was apparently built for a gun-boat, with low bulwarks, over which pivot guns could play. The Commander of Her Majesty's ship *Majestic*, stationed at Liverpool, stated that she was not intended for mercantile purposes; that she might be used as a yacht, and was easily convertible into a man of war. The defendants offered no evidence.

The question was left to the jury by the Chief Baron as follows:—

"Was there any intention that, in the port of Liverpool, or in any other port, she should be either equipped, furnished, fitted out, or armed, with the intention of taking part in any contest? If you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship in obedience to an order and in compliance with a contract, leaving to those who bought it to make what use they thought fit of it, then it appears to me that the Foreign Enlistment Act has not in any degree been broken."

The arguments on the motion to discharge the rule are recorded in Hurlstone and Coltman's Exchequer Reports, ii, 431. (*Attorney-General* v. *Sillem.*)

tion, she remained at Nassau until the end of the war, and was afterwards known as the *Mary*. The Government of the United States laid claim to her as public property, and an action was brought against the ship in the British Court of Admiralty.

April 8, 1863.—The *Japan*, *Virginia*, or *Georgia*. Referred to Home Office and Treasury, April 8.

Mr. Adams stated that a steamer called originally the *Japan*, and afterwards the *Virginia*, intended for the naval service of the Confederates, had sailed from the Clyde; that her immediate destination was believed to be Alderney; and that her armament was to meet her there in a vessel from Newhaven. Instructions were sent to the Lieutenant-Governor of Guernsey to be on the watch, and, should occasion arise, to enforce the Foreign Enlistment Act; and the officers of the Customs at Alderney were directed to give their assistance. It appeared on inquiry that she was a new vessel built on the Clyde; that she had cleared on the 1st April for Point de Galle and Hong Kong in ballast, and had sailed a day or two afterwards with a crew of forty-eight men; that her framework and platings were such as are usual in commercial vessels of her class; and that the revenue officers had observed nothing in her spars or fittings to excite the suspicion that she was intended for war. All her crew signed articles for Singapore. She did not go to Alderney, but to the coast of France, where she stood on and off till she met with the *Alar*, a small steamer trading between Newhaven and the Channel Islands, which brought her captain and her whole armament. The two steamers, when they encountered one another, were within three or four miles of Morlaix, and they were busy for three nights in transhipping arms and stores, anchoring after dark close to the shore, and gaining an offing in the day-time. The captain then put on a uniform, had the crew piped aft, and told them he was not going to Singapore but to

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cruise, and that those who did not choose to sign articles and enter the Confederate service might return in the *Alar*. This happened, according to the seaman who gave evidence, about two miles from Brest. The *Alar* returned; the *Virginia* (afterwards called the *Georgia*) appears to have gone into Cherbourg, and subsequently went cruising.

July 11, 1863.—The iron-clads *El Monassir* and *El Toussoon*. Referred to Treasury, Home Office, and Law Officers, July 13.

These were two iron-plated steamers, one armed with a projecting ram or piercer, stated to be building in the yard of Messrs. Laird and Co., at Birkenhead, and very nearly finished. Inquiry was at once made. The Collector of Customs at Liverpool reported that, according to his belief, they were not building to the order of the Confederates, but under a French contract. The French Government denied that they were for the French navy; and it was represented that they were for a M. Bravay, a French merchant then at Liverpool, a member of a Paris firm, who had bought them for the Government of Egypt. The Pasha of Egypt disclaiming any knowledge of them, M. Bravay explained that he had bought them on the faith of an order for two iron-clads given to him by the Pasha's predecessor, who died in 1862. It appeared that M. Bravay had in fact made in February 1863 certain claims against the Government of Egypt, amongst which was a claim on account of two iron-clads, which he said he had been verbally ordered by the late Pasha to procure for him. Eventually he produced a copy of a deed, dated 18th July, 1863, from which it appeared that the vessels had been ordered by Bullock in June 1862, and that Bullock's interest in them had been transferred to Bravay. While these inquiries were being prosecuted, the vessels were getting ready, and the builders desired to send out one of them on a trial trip. But this proposal was

abandoned on its being notified that she must carry with her a guard of seamen and marines from the *Majestic*, the commander of which had been directed to keep watch upon their movements. Information was afterwards received that an attempt might possibly be made to elude the vigilance of the *Majestic*, and carry the two steamers to sea by force. They were then seized; but, considerable difficulty being encountered in proving that they were intended for the Confederates, the Government at last cut the knot by purchasing them, at a cost of half-a-million sterling.

October 17, 1863.—The *Canton* or *Pampero*. Referred to Treasury, Home Office, and Admiralty, October 19.

This vessel, which was being built on the Clyde, and stated to be intended as a merchant-ship for the China trade, was seized after inquiry, under the advice of the Lord-Advocate. The Crown obtained judgment by default, the case being undefended, and the vessel remained under seizure till the end of the war.

November 28, 1863.—The *Rappahannock*. Referred to Home Office, Admiralty, Treasury, and Law Officers, November 29.

The *Victor*, an old despatch-boat belonging to Her Majesty's Navy, was one of a number of ships ordered by the Admiralty to be sold as worn-out and unserviceable. An offer for her was accepted on the 14th September, 1863, and on the 10th November the hull was delivered to the order of the purchasers, Messrs. Coleman and Co., the masts, sails, and rigging having been previously removed, as well as the pivots and other fittings for guns. On the 26th November she came into the harbour of Calais, flying the Confederate flag, and announced herself as the Confederate steamer *Rappahannock*. She had been masted, it appeared, and partly rigged, at Sheerness, and, from a fear lest the vigilance of the Government should be aroused, had put to sea in haste on the night of the 25th with her spars

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and rigging incomplete, and leaving her water-tanks and most of her coal behind. She was recognized, I believe, by the French Government as a ship-of-war, on the person in command of her producing a Confederate commission; and received permission to make such repairs as were necessary to enable her to go to sea, provided there were no augmentation of her warlike force. It was subsequently found, however, that she had greatly increased her crew, and she was on this charge detained by order of the Government till the end of the war, when she was sold to a Liverpool shipowner and christened the *Beatrix*.

In consequence of this affair, orders were given that no more ships should be sold out of the Navy, lest they should fall into belligerent hands. It may be added that, when the flotilla of gun-boats which Captain Sherard Osborn had procured for the Emperor of China was to be disposed of, the British Government, lest they should be used for the purposes of the war, undertook the sale of them, guaranteeing the Chinese Government against loss. This transaction cost the nation altogether upwards of 100,000*l*.

March 18, 1864.—The *Amphion*. Referred to Home Office, March 18.

This vessel was said to be equipped for the Confederate service. The Law Officers reported that no case was made out. She was eventually sent to Copenhagen for sale as a merchant-ship.

April 16, 1864.—The *Hawk*. Referred to Home Office, to the Lord-Advocate, and the Treasury, April 18.

This case had been already (April 4) reported on by the Customs, and the papers sent to the Lord-Advocate. On the 13th April the ship, which was suspected of having been built for the Confederates, left the Clyde without a register, and came to Greenhithe. The Law Officers decided that there was no

evidence to warrant a seizure. She proved to be a blockade-runner.

May 9, 1864.—The *Georgia*, at Liverpool.

The earlier history of this ship has been given above. She arrived in Liverpool in May 1864 under Confederate colours, and was dismantled and sold to an English firm for use as a merchant-ship. Mr. Adams represented on the 27th July that she was being refitted for war. This proved to be an error. She was sent by her purchasers to Portugal, but was captured off Lisbon by the *Niagara*, and carried to the United States as a prize.

This case gave occasion to the Order of the 8th September, 1864, prohibiting ships of war belonging to either belligerent from being dismantled and sold in British ports.[1]

November 18, 1864.—The *Sea King*, or *Shenandoah*.

The first report received concerning this vessel was from Her Majesty's Consul at Teneriffe. She was a merchant-steamer which had belonged to a Bombay Company, and been employed in the East India trade under the name of the *Sea King*. It appeared that she had sailed from London on the 7th October, not fitted in any way as a vessel-of-war, with two eighteen-pounders on board, such as merchantmen carry for defence in the China seas, and had met in Funchal Roads a steamer called the *Laurel*, which had cleared from Liverpool for Nassau. The two vessels went to the island of Porto Santo, at a short distance from Madeira, and anchored in smooth water close to the shore, where the *Laurel* discharged arms, ammunition, and stores into the *Sea King*—an operation which lasted during several days. The master of the latter vessel then told his crew that she was transferred to the Confederate navy; that those who chose to join her might do so;

[1] See Note to Chapter VI, p. 141.

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the rest might take their clothes and go aboard the steamer alongside, which would carry them to Liverpool. Her new captain and officers, who had come out in the *Laurel*, used every endeavour to induce the men to sign articles, offering as much as 7*l.* a-month and 16*l.* bounty. A bucket of sovereigns, it is said by an eye-witness, was brought on deck, and the officers took up handfuls to tempt the men. Of the *Sea King*'s crew only four yielded—an engineer, two firemen, and an ordinary seaman; forty-two stood firm, and were carried by the *Laurel* to Funchal. The *Sea King*, with only nineteen men on board beside her officers, hoisted the Confederate flag, and started on her cruise as the *Shenandoah*.

January 30, 1865.—The *Virginia*, and the *Louisa Ann Fanny*. Referred to Treasury, February 1.

Vessels said to be in course of equipment at London.

No case was established; and they proved to be blockade-runners, as reported by the Governor of the Bahamas, who had been instructed to watch their proceedings.

February 7, 1865.—The *Hercules* and *Ajax*. Referred to Treasury and Home Office, February 8 and 9.

Both vessels built in the Clyde.

The *Ajax* first proceeded to Ireland, and was detained at Queenstown by the mutiny of some of the crew, who declared she was for the Confederate service. She was accordingly searched, but proved to be only fitted as a merchant-ship. The Governor of the Bahamas was instructed to watch her at Nassau. On her arrival there she was again overhauled, but nothing suspicious discovered, and the Governor reported that she was adapted, and he believed intended, for a tug-boat.

The *Hercules* being still in the Clyde, inquiries were made by the Customs' officers there, who reported

that she was undoubtedly a tug-boat and the sister ship to the *Ajax*.[1]

Prosecutions for procuring Men to serve in Confederate Ships.

Five prosecutions were instituted at different times against persons charged with having enlisted or engaged

[1] The story of a ship of many names—the *Sphinx*, *Stoer Kodder*, *Olinde*, or *Stonewall*—may be fitly mentioned here, although she was neither built nor armed in Great Britain, and never found her way into any British port. The *Sphinx* was one of six vessels which Captain Bullock, when he found himself foiled in England by the seizure of the *Alexandra* and the two iron-clads, had ordered in France. In France a company was formed for the express purpose of selling ships-of-war to the Confederates, and at the head of it was a great shipbuilder of Bordeaux, who was an active member of the Chamber of Deputies. The six ships were built, some at Bordeaux, some at Nantes. Two were iron-clad rams. The complaints of Mr. Dayton induced the French Government to institute an inquiry. M. Arman denied indignantly the charge alleged against him, but the French Government finally decided on cancelling the permission to arm these ships which it had previously given. Five of the vessels were ultimately sold by the builders to the Governments of Prussia, Sweden, and Peru. One iron-clad, the *Sphinx*, which remained, was offered to Denmark, and actually sent, as the *Stoer Kodder*, under the French flag to Copenhagen; whence, the Danish Government refusing to take her, she returned under Danish colours to the Breton coast, there took on board some coal sent from St. Nazaire, and arms and men (part of the crew of the *Florida*) from England, and went to sea as the Confederate steamer *Olinde*, a name subsequently exchanged for the *Stonewall*. She first made for Lisbon, where she met with two Federal cruisers. From these she escaped by the enforcement of the rule of twenty-four hours, found her way to Havana, and at the close of the war fell into the hands of the Government of the United States, by whom she was disposed of—at a rather high price, it was said—to the Mikado of Japan.

The Government of the United States brought an action against M. Arman to recover the money which had been paid to him by Bullock, and a further sum for damages. His proceedings, coupled with his position as a member of the Chamber, had raised, it was alleged, the hopes of the Confederates, and had tended to drive American shipping from the sea. The injury thus occasioned was estimated at 2,800,000 francs. I do not know what was the fate of this singular demand.

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men for the naval service of the Confederate States. Of these three were successful. Five of the accused were convicted, or pleaded guilty. Two persons, whom it was intended to prosecute for having induced men to join the *Rappahannock*, saved themselves by absconding. In every case in which men belonging to the Naval Reserve could be traced as entering the Confederate service, their names were struck off the list. No prosecution appears to have been instituted against Bullock himself, nor does there appear to have been evidence that he actually infringed the law.

These are the facts connected with the equipment, or alleged equipment, of Confederate ships-of-war in British ports. In the next Chapter I shall give an account of the international questions to which these facts gave rise.

NOTE.

Affidavits laid before the Board of Customs and before the Secretary of State for Foreign Affairs (22*nd July*) *in the case of the* Alabama.

No. 1.

"I, William Passmore, of Birkenhead, in the County of Chester, Mariner, make oath, and say as follows:—

"1. I am a seaman, and have served as such on board Her Majesty's ship *Terrible* during the Crimean war.

"2. Having been informed that hands were wanted for a fighting vessel built by Messrs. Laird and Co., of Birkenhead, I applied on Saturday, which was, I believe, the 21st day of June last, to Captain Butcher, who, I was informed, was engaging men for the said vessel, for a berth on board her.

"3. Captain Butcher asked me if I knew where the vessel was going, in reply to which I told him I did not rightly understand about it. He then told me vessel was going out to the Government of the Confederate States of America. I asked him if there would be any fighting, to which he replied, 'Yes; they were going to fight for the Southern Government.' I told him I had been used to fighting vessels,

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and showed him my papers. I asked him to make me signal-man on board the vessel, and in reply he said that no articles would be signed until the vessel got outside, but he would make me signal-man, if they required one, when they got outside.

"4. The said Captain Butcher then engaged me as an able seaman on board the said vessel at the wages of 4*l.* 10*s.* per month; and it was arranged that I should join the ship in Messrs. Laird and Co.'s yard on the following Monday. To enable me to get on board, Captain Butcher gave me a password, the number '290.'

"5. On the following Monday, which was, I believe, the 23rd day of June last, I joined the said vessel in Messrs. Laird and Co.'s yard at Birkenhead, and I remained by her till Saturday last.

"6. The said vessel is a screw steamer of about 1,100 tons burden, as far as I can judge, and is built and fitted up as a fighting ship in all respects; she has a magazine and shot and canister racks on deck, and is pierced for guns, the sockets for the bolts of which are laid down. The said vessel has a large quantity of stores and provisions on board, and she is now lying at the Victoria Wharf in the Great Float at Birkenhead, where she has taken in about 300 tons of coal.

"7. There are now about thirty hands on board her, who have been engaged to go out in her; most of them are men who have previously served on board fighting ships; and one of them is a man who served on board the Confederate steamer *Sumter*. It is well known by the hands on board that the vessel is going out as a privateer for the Confederate Government to act against the United States under a commission from Mr. Jefferson Davis. Three of the crew are, I believe, engineers; and there are also some firemen on board.

"8. Captain Butcher and another gentleman have been on board the ship almost every day. It is reported on board the ship that Captain Butcher is to be the sailing-master, and that the other gentleman, whose name, I believe, is Bullock, is to be the fighting captain.

"9. To the best of my information and belief, the above-mentioned vessel, which I have heard is to be called the *Florida*, is being equipped and fitted out in order that she may be employed in the service of the Confederate Government in America to cruise and commit hostilities against the Government and people of the United States of America.

(Signed) "WILLIAM PASSMORE."

No. 2.

"I, John de Costa, of No. 8, Waterloo-road, Liverpool, Shipping Master, make oath, and say as follows:—

"1. I know, and have for several months known, by sight Captain

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Bullock, who is very generally known in Liverpool as an Agent or Commissioner of the Confederate States in America.

"2. In the month of March last I saw the screw-steamer *Annie Childs*, which had run the blockade from Charleston, enter the River Mersey. She came up the Mersey with the Confederate flag flying at her peak; and I saw the *Oreto*, a new gun-boat which had been recently built by Messrs. W. C. Miller and Sons, and which was then lying at anchor in the river off Egremont, dip her colours three times in acknowledgment of the *Annie Childs*, which vessel returned the compliment, and a boat was immediately afterwards despatched from the *Annie Childs* to the *Oreto* with several persons on board, besides the men who were at the oars.

"3. On the 22nd day of March last I was on the North Landing Stage between 7 and 8 o'clock in the morning; I saw the said Captain Bullock go on board a tender, which afterwards took him off to the said gun-boat *Oreto*, which was then lying in the Sloyne. Just before he got on board the tender, he shook hands with a gentleman who was with him, and said to him, 'This day six weeks you will get a letter from me from Charleston,' or words to that effect.

"4. On the same day, between 11 and 12 o'clock, as well as I can remember, I saw the *Oreto* go to sea. She came well in on the Liverpool side of the river, and from the Princes Pier Head where I was standing, I distinctly saw the said Captain Bullock on board her, with a person who had been previously pointed out to me by a fireman who came to Liverpool in the *Annie Childs* as a Charleston pilot, who had come over in the *Annie Childs* with Captain Bullock to take the gun-boat out.

(Signed) "JOHN DE COSTA."

No. 3.

"I, Allan Stanley Clare, of Liverpool, in the County of Lancaster, Articled Clerk, make oath, and say as follows:—

"1. On the 21st day of July now instant, I examined the book at the Birkenhead Dockmaster's Office at Birkenhead, containing a list of all vessels which enter the Birkenhead Docks; and I found in such book an entry of a vessel described as 'No. 290,' and from the entries in the said book, in reference to such vessel, it appears that she is a screw-steamer, and that her registered tonnage is 500 tons, and that Matthew J. Butcher is her master.

(Signed) "ALLAN S. CLARE."

No. 4.

" We, Henry Wilding, of Liverpool, in the County of Lancaster, Gentleman, and Matthew Maguire, of Liverpool, aforesaid, Agent, make oath and say as follows:—

" 1. I, the said Matthew Maguire, for myself, say that on the 15th day of July now instant, I took Richard Brogan, whom I know to be an apprentice, working in the ship-building yard of Messrs. Laird and Co., at Birkenhead, to the above-named deponent, Henry Wilding, at his residence at New Brighton.

" 2. And I, the said Henry Wilding, for myself, say as follows:— I am the Vice-Consul of the United States of North America, at Liverpool.

" 3. On the 15th day of July, now instant, I saw the said Richard Brogan, and examined him in reference to a gun-boat which I had heard was being built by the said Messrs. Laird and Co. for the so-called Confederate Government, and the said Richard Brogan then informed me that the said vessel was built to carry four guns on each side, and four swivel guns; that Captain Bullock had at one time, when the vessel was in progress, come to the yard almost every day to select the timber to be used for the vessel. That the said Captain Bullock was to be the Captain of the said vessel, and that the said Captain Bullock had asked the said Richard Brogan to go as carpenter's mate in the said vessel for three years, which the said Richard Brogan had declined to do, because Mr. Laird, who was present at the time, would not guarantee his wages. That the said vessel was to carry 120 men, and that 30 able seamen were already engaged for her. That the petty officers for the said vessel were to be engaged for three years, and the seamen for five months. That the said vessel was then at the end of the new warehouses in the Birkenhead Dock, and that it was understood she was to take her guns on board at Messrs. Laird and Co.'s shed further up the dock; and that it was generally understood by the men in Messrs. Laird and Co.'s yard, that the said vessel was being built for the Confederate Government.

" 4. The vessel above-mentioned is the same which is now known as 'No. 290,' and I verily believe that the said vessel is in fact intended to be used as a privateer or vessel-of-war, under a commission from the so-called Confederate Government, against the United States' Government.

(Signed) " H. Wilding.
" Matthew Maguire."

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No. 5.

Note.

"I, Thomas Haines Dudley, of No. 3, Wellesley-terrace, Princes Park, in the Borough of Liverpool, in the county of Lancaster, Esq., being one of the people called Quakers, affirm and say as follows:—

"1. I am the Consul of the United States of North America, for the Port of Liverpool and its dependencies.

"2. In the month of July, in the year 1861, information was sent by the United States' Government to the United States' Consulate at Liverpool, that a Mr. James D. Bullock, of Savannah, in the State of Georgia, who was formerly the master of an American steamer, called the *Cahawba*, was reported to have left the United States for England, taking with him a credit for a large sum of money, to be employed in fitting out privateers, and also several commissions issued by the Southern Confederate States for such privateers, and in the month of August in the year 1861, information was sent by the United States' Government to the United States' Consulate at Liverpool, that the said Captain Bullock was then residing near Liverpool, and acting as the agent of the said Confederate States in Liverpool and London.

"3. In accordance with instructions received from the Government of the United States, steps have been taken to obtain information as to the proceedings and movements of the said James D. Bullock, and I have ascertained the following circumstances, all of which I verily believe to be true, viz., that the said James D. Bullock is in constant communication with parties in Liverpool, who are known to be connected with, and acting for the parties who have assumed the Government of the Confederate States. That the said James D. Bullock, after remaining for some time in England, left the country, and after an absence of several weeks, returned to Liverpool in the month of March last from Charleston, in the State of South Carolina, one of the seceded States, in a screw-steamer, then called the *Annie Childs*, which had broken the blockade of the Port of Charleston, then and now maintained by the United States' Navy, and which vessel, the *Annie Childs*, carried the flag of the Confederate States as she came up the Mersey. That, shortly after the arrival of the said James D. Bullock at Liverpool in the *Annie Childs*, as above-mentioned, he again sailed from Liverpool in a new gun-boat, called the *Oreto*, built at Liverpool by Messrs. W. C. Miller and Sons, shipbuilders, and completed in the early part of the present year, and which gun-boat, the *Oreto*, though she cleared from Liverpool for Palermo and Jamaica, in reality never went to those places, but proceeded to Nassau, New Providence, to take on board guns and arms, with a view to her being used as a privateer or vessel-of-war under a commission from the so-called Confederate Government against the Government of the United States, and which said vessel, the *Oreto*, is stated to have been lately seized at Nassau by the commander of Her Majesty's ship *Greyhound*. That the said James D. Bullock has since returned again to Liverpool,

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and that before he left Liverpool, and since he returned, he has taken an active part in superintending the building, equipment, and fitting out of another steam gun-boat, known as 'No. 290,' which has lately been launched by Messrs. Laird and Co., of Birkenhead, and which is now lying, as I am informed and believe, ready for sea in the Birkenhead Docks, with a large quantity of provisions and stores, and thirty men on board. That the said James D. Bullock is going out in the said gun-boat 'No. 290,' which is nominally commanded by one Matthew S. Butcher, who, I am informed, is well acquainted with the navigation of the American coast, having formerly been engaged in the coasting trade between New York, Charleston, and Nassau.

"4. From the circumstances which have come to my knowledge, I verily believe that the said gun-boat 'No. 290' is being equipped and fitted out as a privateer or vessel of war to serve under a commission to be issued by the Government of the so-called Confederate States, and that the said vessel will be employed in the service of the said Confederate States to cruise and commit hostilities against the Government and people of the United States of North America.

(Signed) "THOMAS H. DUDLEY."

No. 6.

"I, Matthew Maguire, of Liverpool, agent, make oath, and say as follows:—

"1. I know Captain J. D. Bullock, who is commonly reputed to be the Agent or Commissioner of the Confederate States of America at Liverpool.

"2. I have seen the said J. D. Bullock several times at the yard of Messrs. Laird and Co., at Birkenhead, where a gun-boat, known as 'No. 290,' has lately been built, whilst the building of the said vessel has been going on.

"3. On the 2nd day of July now instant, I saw the said J. D. Bullock on board the said vessel in Messrs. Laird and Co.'s yard; he appeared to be giving orders to the workmen who were employed about such vessel.

(Signed) "MATTHEW MAGUIRE."

Note. *Subsequent Affidavits sent by Mr. Squarey to the Board of Customs on the 23rd July.*

No. 7.

"I, Edward Roberts, of No. 6, Vere-street, Toxteth Park, in the county of Lancaster, ship-carpenter, make oath and say as follows.—

"1. I am a ship-carpenter, and have been at sea for about four years in that capacity.

"2. About the beginning of June last I had been out of employ for about two months, and hearing that there was a vessel in Messrs. Laird and Co.'s yard fitting out to run the blockade, I applied to Mr. Barnett, shipping-master, to get me shipped on board the said vessel.

"3. On Thursday, the 19th day of June last, I went to the said Mr. Barnett's Office, No. 11, Hanover-street, Liverpool, in the county of Lancaster, and was engaged for the said vessel as carpenter's mate. By the direction of the said Mr. Barnett I met Captain Butcher the same day on the George's landing-stage, and followed him to Messrs. Laird and Co's ship-building yard, and on board a vessel lying there. The said Captain Butcher spoke to the boatswain about me, and I received my orders from the said boatswain. At dinner-time the same day, as I left the yard, the gateman asked me if I was 'going to work on that gun-boat;' to which I replied, 'Yes.'

"4. The said vessel is now lying in the Birkenhead float, and is known by the name of "No. 290." The said vessel has coal and stores on board. The said vessel is pierced for guns, I think four on a side, and a swivel gun. The said vessel is fitted with shot and canister-racks, and has a magazine. There are about fifty men, all told, now on board of the said vessel. It is generally understood on board of the said vessel that she is going to Nassau for the Southern Government.

"5. I know Captain Bullock by sight, and have seen him on board of the said vessel five or six times; I have seen him go round the said vessel with Captain Butcher. I understood both at Messrs. Laird and Co's yard and also on board the said vessel, that the said Captain Bullock was the owner of the said vessel.

"6. I have been working on board the said vessel from 19th day of June last up to the present time, with wages at the rate of 6*l.* per month, payable weekly. I have signed no articles of agreement. The talk on board is that an agreement will be signed before sailing.

(Signed) "Edward Roberts."

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"I, Robert John Taylor, of Mobile, but at present remaining temporarily at Liverpool, mariner, make oath and say as follows:—

"1. I am a native of London, and 41 years of age. From 14 years upwards I have followed the sea. During the last fifteen years I have been living in the Confederate States of America, principally at Savannah and Mobile, and since the Secession movement I have been engaged in running the blockade. I have run the blockade six times, and been captured once.

"2. The vessels in which I have been engaged in running the blockade have sailed from Mobile, and have gone to Havana and New Orleans. I am well acquainted with the whole of the coast of the Confederate States, as I have been principally engaged since 1847 in trading to and from the Gulf ports.

"3. I came to England after my release from Fort Warren, on the 29th of May last. I came here with the intention of going to the Southern States, as I could not get there from Boston.

"4. Mr. Rickarby, of Liverpool, a brother of the owner, at Mobile, of the vessel in which I was captured when attempting to run the blockade, gave me instructions to go to Captain Butcher at Laird's yard, Birkenhead. I had previously called on Mr. Rickarby, and told him that I wanted to go to the South, as the Northerners had robbed me of my clothes when I was captured, and I wanted to have satisfaction.

"5. I first saw Captain Butcher at one of Mr. Laird's offices last Thursday fortnight (namely the 3rd of July last). I told him that I had been sent by Mr. Rickarby, and asked him if he were the Captain of the vessel which was lying in dock. I told him that I was one of the men that had been captured in one of Mr. Rickarby's vessels, and that I wanted to get South in order to have retaliation of the Northerners for robbing me of my clothes. He said that if I went with him in his vessel I should very shortly have that opportunity.

"6. Captain Butcher asked me at the interview if I was well acquainted with the Gulf ports, and I told him I was. I asked him what port he was going to, and he replied that he could not tell me then, but that there would be an agreement made before we left for sea. I inquired as to the rate of wages, and I was to get 4*l.* 10*s.* per month, payable weekly.

"7. I then inquired if I might consider myself engaged, and he replied, Yes, and that I might go on board the next day, which I accordingly did; and I have been working on board up to last Saturday night.

"8. I was at the siege of Acre in 1840, in Her Majesty's frigate *Pique*, Captain Edward Boxer, and served on board nine months. Captain Butcher's ship is pierced for eight broadside guns and four swivels or long-toms. Her magazine is complete, and she is fitted up

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in all respects as a man-of-war, without her ammunition. She is now chock-full of coals, and has, in addition to those in the hold, some thirty tons on deck.

"9. One day whilst engaged in heaving up some of the machinery, we were singing a song, as seamen generally do, when the boatswain told us to stop that, as the ship was not a merchant-ship, but a man-of-war.

(Signed) "ROBERT JOHN TAYLOR."

Later Affidavit received by the Board of Customs on the 25th July.

No. 9.

"I, Henry Redden, of Hook Street, Liverpool, in the County of Lancaster, seaman, make oath and say as follows:—

"1. I am a seaman and have followed the sea for fifteen years. I have been boatswain on board both steamers and sailing vessels, and belong to the Naval Reserve.

"2. About six weeks ago I was engaged by Captain Butcher (with whom I have previously sailed) as boatswain on board a vessel then in Messrs. Laird and Co.'s ship-building yard, but now lying in the Birkenhead Float, and known by the name '290.' The said Captain Butcher offered me 10*l.* per month, and said an agreement should be signed when we got outside. He told me that we should have plenty of money when we got home, as we were going to the Southern States on a speculation to try and get some.

"3. The crew now on board the said vessel consists of about forty men, but I believe that she will take to sea about 100 men, all told. It is generally understood on board that she will clear for Nassau, but not make that port. The said vessel has all her stores and coals on board ready for sea. She is fitted in all respects as a man-of-war, to carry six broadside guns and four pivots, but has no guns or ammunition on board as yet. The rules on board are similar to those in use on a man-of-war, and the men are not allowed to sing as they do on a merchantman. The call is used on board. The said vessel is of about 1,100 tons burthen.

"4. I know Captain Bullock. He has been superintending the building of the said vessel in Messrs Laird and Co.'s yard, and is, I believe, to take charge of the vessel when we get outside.

5. It is generally understood on board the said vessel that she belongs to the Confederate Government.

(Signed) "HENRY REDDEN."

CHAPTER XIV.

Complaints of the American Government and its Claims for Redress.—Correspondence with Mr. Adams.—Despatch of Secretary Fish.—Recapitulation of Facts.—Case of the *Alabama;* the Question stated.—Was there Neglect?—Was there a Violation of Neutrality?—Remarks on this Subject.—The Neutrality Laws of England and America.—Proposals for the Revision of them in England; in the United States.

On the facts related in the preceding chapter the Government of the United States founded a long series of representations, complaints, and demands, gradually rising higher and higher, the nature and substance of which will appear from the following statement.

The first complaint of actual injury sustained by the United States after the departure of the *Alabama* was conveyed by Mr. Adams in language of great moderation :—

"The injuries to which the people of the United States are subjected by the unfortunate delays experienced in the case of my remonstrance against the fitting out of the gun-boat '290,' now called the Confederate steamer *Alabama*, are just beginning to be reported. I last night received intelligence from Gibraltar that this vessel has destroyed ten whaling-ships in the course of a short time at the Azores.

"I have strong reason to believe that still other enterprises of the same kind are in progress in the ports of Great Britain at this time: indeed, they have attained so much notoriety as to be openly announced in the newspapers of Liverpool and London. In view of the very strong legal opinion which I had the honour to present to your Lordship's consideration, it is impossible that all these things should not excite great attention in the United States. I very much fear they will impress the people and the Government with a belief, however unfounded, that their just claims on the neutrality of Great Britain have not been sufficiently estimated. The extent to which Her Majesty's

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flag, and some of her ports, have been used to the end of carrying on hostile operations, is so universally understood that I deem it unnecessary further to dwell upon it. But in the spirit of friendliness with which I have ever been animated towards Her Majesty's Government, I feel it my duty to omit no opportunity of urging the manifestation of its well-known energy in upholding those laws of neutrality upon which alone the reciprocal confidence of nations can find a permanent base."[1]

To this Lord Russell replied that, "much as Her Majesty's Government desire to prevent such occurrences, they are unable to go beyond the law, municipal and international."[2]

Mr. Adams rejoined :—

"I am well aware of the fact to which your Lordship calls my attention in the note of the 4th instant, the reception of which I have the honour to acknowledge, that Her Majesty's Government are unable to go beyond the law, municipal and international, in preventing enterprises of the kind referred to. But in the representations which I have had the honour lately to make, I beg to remind your Lordship that I base them upon evidence which applies directly to infringements of the municipal law itself, and not to anything beyond it. The consequence of an omission to enforce its penalties is therefore necessarily that heretofore pointed out by eminent Counsel, to wit, that 'the law is little better than a dead letter;' a result against which 'the Government of the United States has serious ground of remonstrance.'"[3]

On the 20th November, 1862, after referring to the directions issued, as we have seen, by the British Government for the detention of the *Alabama*, but issued too late, he proceeded :—

"It thus appears that Her Majesty's Government had become so far convinced of the true nature of the enterprise in agitation at Liverpool from the evidence which I had had the honour to submit to your Lordship's consideration, and from other inquiry, as to have determined on detaining the vessel. So far as this action went, it seems to have admitted the existence of a case of violation of the laws of neutrality in one of Her Majesty's ports of which the Government of the United States had a right to complain. The question will then

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[1] *Mr. Adams to Earl Russell*, 30th September, 1862.
[2] *Earl Russell to Mr. Adams*, 4th October, 1862.
[3] *Mr. Adams to Earl Russell*, 9th October, 1862.

remain how far the failure of the proceedings thus admitted to have been instituted by Her Majesty's Government to prevent the departure of this vessel affects the right of reclamation of the Government of the United States for the grievous damage done to the property of their citizens in permitting the escape of this lawless pirate from its jurisdiction."

He referred to the Seventh Article of the Treaty of 19th November, 1794, between Great Britain and the United States (Lord Grenville's Treaty) as a precedent warranting a demand for redress in like cases, and concluded:—

"Armed by the authority of such a precedent; having done all in my power to apprise Her Majesty's Government of the illegal enterprise in ample season for affecting its prevention; and being now enabled to show the injurious consequences to innocent parties relying upon the security of their commerce from any danger through British sources, ensuing from the omission of Her Majesty's Government, however little designed, to apply the proper prevention in due season, —I have the honour to inform your Lordship of the directions which I have received from my Government to solicit redress for the national and private injuries already thus sustained, as well as a more effective prevention of any repetition of such lawless and injurious proceedings in Her Majesty's ports hereafter."

Lord Russell, in reply, disputing the application which Mr. Adams had made of the Treaty of 1794, dwelt upon his admission that the *Alabama* had sailed, not only without the direct authority or indirect permission of the Government, but in opposition to the municipal law, and in spite of earnest endeavours made to enforce it:—

"It is not denied that strict orders were given for her detention as soon as it appeared to the legal advisers of the Crown that the evidence might be sufficient to warrant them in advising such a course; and that the *Alabama* contrived to evade the execution of those orders. Her Majesty's Government cannot, therefore, admit that they are under any obligation whatever to make compensation to United States' citizens on account of the proceedings of that vessel.

"As regards your demand for a more effective prevention, for the future, of the fitting out of such vessels in British ports, I have the honour to inform you that Her Majesty's Government, after consultation with the Law Officers of the Crown, are of opinion that certain

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amendments might be introduced into the Foreign Enlistment Act, which, if sanctioned by Parliament, would have the effect of giving greater power to the Executive to prevent the construction, in British ports, of ships destined for the use of belligerents. But Her Majesty's Government consider that, before submitting any proposals of that sort to Parliament, it would be desirable that they should previously communicate with the Government of the United States, and ascertain whether that Government is willing to make similar alterations in its own Foreign Enlistment Act, and that the amendments, like the original statute, should, as it were, proceed *pari passu* in both countries. I shall accordingly be ready to confer at any time with you, and to listen to any suggestions which you may have to make, by which the British Foreign Enlistment Act and the corresponding Statute of the United States may be made more efficient for their purpose."[1]

Mr. Adams, in answer, stated afresh what he conceived to be the question at issue :—

"It is the admitted fact of a violation of a Statute of this kingdom intended to prevent ill-disposed persons from involving it in difficulty by committing wanton and injurious assaults upon foreign nations with which it is at peace, of which Her Majesty's Ministers are invited by a party injured to take cognizance, of which they do take cognizance so far as to prepare measures of prevention, but which, by reason of circumstances wholly within their own control, they do not prevent in season to save the justly complaining party from serious injury. On the substantial points of the case little room seems left open for discussion. The omission to act in season is not denied; the injury committed on an innocent party is beyond dispute. If in these particulars I shall be found to be correct, then I respectfully submit it to your Lordship whether it does not legitimately follow that such a party has a right to complain and to ask redress. And in this sense it matters little how that omission may have occurred, whether by intentional neglect or by accidental delays having no reference to the merits of the question; the injury done to the innocent party giving a timely notice remains the same, and those who permitted it remain equally responsible."[2]

In February 1863 Lord Russell had a conversation with Mr. Adams, in the course of which the latter said that, on the question whether the law respecting the equipment of vessels for hostile purposes might be improved, his Government was ready to listen to any proposition which the British Government had to make,

[1] *Earl Russell to Mr. Adams*, 19th December, 1862.
[2] *Mr. Adams to Earl Russell*, 30th December, 1862.

but that they did not see how their own law on the subject could be improved. "I said," writes Lord Russell in reporting the conversation to Lord Lyons, "that the Cabinet had come to a similar conclusion, so that no further proceedings need be taken at present on this subject."[1] Reverting to this part of the question at a subsequent interview, Mr. Adams observed that the law of Great Britain was either sufficient or insufficient for the purposes of neutrality. If sufficient, let the Government enforce it; if insufficient, let the Government apply to Parliament to amend it. "I said," reports Lord Russell, "that the Cabinet were of opinion that the law was sufficient, but that legal evidence could not always be procured. That the British Government had done everything in its power to execute the law. But I admitted that the cases of the *Alabama* and the *Oreto* were a scandal, and in some degree a reproach, to our laws."[2]

On this part of the question the discussion went no further.

On the 23rd October, 1863, the American Minister wrote as follows:—

"My Lord,

"It may be within your recollection that in the note of the 17th of September which I had the honour to address to you in reply to yours of the 14th of the same month, respecting the claim for the destruction of the ship *Nora*, and other claims of the same kind, which I had been instructed to make, I expressed myself desirous to defer to your wishes that they should not be further pressed on the attention of Her Majesty's Government, so far as to be willing to refer the question of the withdrawal of my existing instructions back for the consideration of my Government. I have now the honour to inform your Lordship of the result of that application.

"After a careful re-survey of all the facts connected with the outfit and later proceedings of the gun-boat 'No. 290,' now known as the war-steamer *Alabama*, I regret to report to you that the Government of the United States finds itself wholly unable to abandon the position heretofore taken on that subject."

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[1] *Earl Russell to Lord Lyons*, 14th February, 1863.

[2] *The same to the same*, 27th March, 1863.

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After recapitulating some of the circumstances of the case, he proceeded :—

"From a review of these circumstances essential to a right judgment of the question, the Government of the United States understand that the purpose of the building, armament, equipment and expedition of this vessel, carried with it one single criminal intent running equally through all the portions of this preparation, fully complete and executed when the gun-boat 'No. 290' assumed the name of the *Alabama;* and that this intent brought the whole transaction, in all its several parts here recited, within the lawful jurisdiction of Great Britain, where the main portions of the crime were planned and executed.

"Furthermore, the United States are compelled to assume that they gave due and sufficient previous notice to Her Majesty's Government that this criminal enterprise was begun and in regular process of execution, through the agencies herein described, in one of Her Majesty's ports. They cannot resist the conclusion that the Government was then bound by Treaty obligations and by the law of nations to prevent the execution of it. Had it acted with the promptness and energy required by the emergency, they cannot but feel assured the whole scheme must have been frustrated. The United States are ready to admit that it did act so far as to acknowledge the propriety of detaining this vessel for the reasons assigned, but they are constrained to object that valuable time was lost in delays, and that the effort when attempted was too soon abandoned. They cannot consider the justice of their claim for reparation liable to be affected by any circumstances connected with those mere forms of proceeding on the part of Great Britain which are exclusively within her own control.

"Upon these principles of law and these assumptions of fact resting upon the evidence in the case, I am instructed to say that my Government must continue to insist that Great Britain has made itself responsible for the damages which the peaceful, law-abiding citizens of the United States sustain by the depredations of the vessel called the *Alabama.*

"In repeating this conclusion, however, it is not to be understood that the United States incline to act dogmatically, or in a spirit of litigation. They desire to maintain amity as well as peace. They fully comprehend how unavoidably reciprocal grievances must spring up from the divergence in the policy of the two countries in regard to the present insurrection. They cannot but appreciate the difficulties under which Her Majesty's Government is labouring from the pressure of interests and combinations of British subjects apparently bent upon compromising by their unlawful acts the neutrality which Her Majesty has proclaimed and desires to preserve, even to the extent of involving the two nations in the horrors of a maritime war. For these reasons I am instructed to say, that they frankly confess themselves unwilling to regard the present hour as the most favourable to a calm and candid

examination by either party of the facts or the principles involved in cases like the one now in question. Though indulging a firm conviction of the correctness of their position in regard to this and other claims, they declare themselves disposed, at all times, hereafter as well as now, to consider in the fullest manner all the evidence and the arguments which Her Majesty's Government may incline to proffer in refutation of it; and in the case of an impossibility to arrive at any common conclusion I am directed to say, there is no fair and equitable form of Conventional arbitrament or reference to which they will not be willing to submit.

"Entertaining these views, I crave permission to apprise your Lordship that I have received directions to continue to present to your notice claims of the character heretofore advanced, whenever they arise, and to furnish the evidence on which they rest, as is customary in such cases, in order to guard against possible ultimate failure of justice from the absence of it.

"In accordance with these instructions I now do myself the honour to transmit the papers accompanying the cases heretofore withheld, pending the reception of later information.

"I pray, &c.

(Signed) "CHARLES FRANCIS ADAMS."

This letter conveys the first proposal of arbitration made on the part of the United States to the British Government. It was offered as a suggestion, to be taken into consideration at a further period. It was considered accordingly, and declined in August 1865, on the ground that there were but two questions which could be made the subject of a reference: first, whether the British Government had acted with due diligence; secondly, whether its legal advisers had correctly understood their own municipal law; and that neither of these could properly be submitted to a foreign arbiter, still less to a joint commission. That this view was afterwards modified, will be seen when I have occasion to speak of the later negotiations of 1867.

These extracts from a large mass of despatches are enough to show the ground taken by the Government of the United States during the earlier stages of the correspondence. In respect of the *Shenandoah* it was alleged that, although the British Government could not reasonably be held responsible for her original equipment, it had fixed that responsibility on the nation by after-

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wards suffering her to be received in colonial ports. The losses sustained from the *Shenandoah* were accordingly added to the list of claims.

The form which these claims finally assumed when revived by President Grant's Government in the autumn of 1869 will appear in the following extracts from a despatch addressed by the Secretary of State to the American Minister in London, and communicated to the Earl of Clarendon:—

"As time went on, as the insurrection from political came at length to be military, as the sectional controversy in the United States proceeded to exhibit itself in the organization of great armies and fleets, and in the prosecution of hostilities on a scale of gigantic magnitude, then it was that the spirit of the Queen's Proclamation showed itself in the event, seeing that, in virtue of the Proclamation, maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, and thus Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury of the insurgent Confederacy. A spectacle was thus presented without precedent or parallel in the history of civilized nations. Great Britain, although the professed friend of the United States, yet, in time of avowed international peace, permitted armed cruisers to be fitted out and harboured and equipped in her ports, to cruise against the merchant-ships of the United States, and to burn and destroy them, until our maritime commerce was swept from the ocean. Our merchant-vessels were destroyed piratically by captors who had no ports of their own in which to refit or to condemn prize, and whose only nationality was the quarter-deck of their ships, built, despatched to sea, and not seldom in name, still professedly owned in Great Britain.

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"The Queen's Ministers excused themselves by alleged defects in the municipal law of the country. Learned Counsel either advised that the wrongs committed did not constitute violations of the municipal law, or else gave sanction to artful devices of deceit to cover up such violations of law. And, strange to say, the Courts of England or of Scotland up to the very highest were occupied month after month with judicial niceties and technicalities of statute construction in this respect, while the Queen's Government itself, including the omnipotent Parliament, which might have settled these questions in an hour by appropriate legislation, sat with folded arms as if unmindful of its international obligations, and suffered ship after ship to be constructed in its ports to wage war on the United States.

* * * * * * * *

"When the defects of existing laws of Parliament had become

apparent, the Government of the United States earnestly entreated the Queen's Ministers to provide the required remedy, as it would have been easy to do by a proper Act of Parliament; but this the Queen's Government refused.

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"On the present occasion the Queen's Ministers seem to have committed the error of assuming that they needed not to look beyond their own local law, enacted for their own domestic convenience, and might, under cover of the deficiencies of that law, disregard their sovereign duties towards another Sovereign Power.

"Nor was it, in our judgment, any adequate excuse for the Queen's Ministers to profess extreme tenderness of private rights, or apprehension of actions for damages, in case of any attempt to arrest the many ships which, either in England or Scotland, were, with ostentatious publicity, being constructed to cruise against the United States.

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"But although such acts of violation of law were frequent in Great Britain, and susceptible of complete technical proof, notorious, flaunted directly in the face of the world, varnished over, if at all, with the shallowest pretexts of deception, yet no efficient step appears to have been taken by the British Government to enforce the execution of its municipal laws or to vindicate the majesty of its outraged sovereign power.

"And the Government of the United States cannot believe it would conceive itself wanting in respect for Great Britain to impute that the Queen's Ministers are so much hampered by judicial difficulties that the local administration is thus reduced to such a state of legal impotency as to deprive the Government of capacity to uphold its sovereignty against local wrong-doers, or its neutrality as regards other Sovereign Powers.

"If, indeed, it were so, the causes of reclamation on the part of the United States would only be the more positive and sure; for the law of nations assumes that each Government is capable of discharging its international obligations, and, perchance, if it be not, then the absence of such capability is itself a specific ground of responsibility for consequences.

"But the Queen's Government would not be content to admit, nor will the Government of the United States presume to impute to it, such political organization of the British Empire as to imply any want of legal ability on its part to discharge, in the amplest manner, all its duties of sovereignty and amity towards other Powers.

"It remains only in this relation to refer to one other point, namely, the question of negligence—neglect on the part of officers of the British Government, whether superior or subordinate, to detain Confederate cruisers, and especially the *Alabama*, the most successful of the depredators on the commerce of the United States.

"On this point the President conceives that little needs now to be said, for various cogent reasons. First, the matter has been exhaustively discussed already by this Department, or by the successive American Ministers. Then, if the question of negligence be discussed

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with frankness, it must be treated in this instance as a case of extreme negligence, which Sir William Jones has taught us to regard as equivalent or approximate to evil intention. The question of negligence, therefore, cannot be presented without danger of thought or language disrespectful towards the Queen's Ministers; and the President, while purposing, of course, as his sense of duty requires, to sustain the rights of the United States in all their utmost amplitude, yet intends to speak and act in relation to Great Britain in the same spirit of international respect which he expects of her in relation to the United States; and he is sincerely desirous that all discussion between the Governments may be so conducted as not only to prevent any aggravation of existing differences, but to tend to such reasonable and amicable determination as best becomes two great nations of common origin and conscious dignity and strength.

"I assume, therefore, pretermitting detailed discussion in this respect, that the negligence of the officers of the British Government, in the matter of the *Alabama* at least, was gross and inexcusable, and such as indisputably to devolve on that Government full responsibility for all the depredations committed by her. Indeed, this conclusion seems in effect to be conceded in Great Britain. At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point; and it should be taken for granted in all future negotiations with Great Britain."

The general effect of these proceedings may, in the opinion of the American Government, be thus stated. Great Britain, and Great Britain alone "founded," on her recognition of the revolted States as belligerents, "a systematic maritime war against the United States, and this to effect the establishment of a Slave Government. What in France, in Spain, as their subsequent conduct showed, had been but an untimely and ill-judged act of political manifestation, had in England, as her subsequent conduct showed, been a virtual act of war."[1]

[1] *Mr. Fish to Mr. Motley*, 25th September, 1869. Mr. Motley read this despatch to the Earl of Clarendon, and gave him a copy of it. All the statements which it contained were answered in detail by Lord Clarendon, in a paper described as *Observations on Mr. Fish's Despatch*. This was sent, with a covering despatch, to Mr. Thornton, and he was instructed to communicate it to the American Secretary of State. Mr. Fish's despatch was afterwards laid before Congress and published in the United States, but Lord Clarendon's answer was not published.

The Confederate Government had viewed the conduct of Great Britain

The rhetorical colour—to use an inoffensive phrase—thrown over the foregoing train of assertions, which purport to be statements of fact, makes it proper to place side by side with them a short recapitulation of the facts as they really were:—

1. The number of ships built or purchased in British ports which became Confederate cruisers was four. Of these, one—the *Oreto* or *Florida*—had been seized and put on her trial, but released by a Vice-Admiralty Court for want of evidence.

2. The number of ships preparing for the Confederate service and stopped by the British Government (other than the *Florida*) was four. Two of these were iron-clads.

3. The number of ships which were made the subject of inquiry, but as to which the American Minister proved to have been misinformed, was ten.

4. Of the four ships which succeeded in putting to sea not one sailed armed or equipped for war, or

in a different light. "The partiality," said Mr. Davis, "of Her Majesty's Government in favour of our enemies has been further evinced in the marked difference of its conduct on the subject of the purchase of supplies by the two belligerents. The difference has been conspicuous since the very commencement of the war. As early as the 1st of May, 1861, the British Minister at Washington was informed by the Secretary of State of the United States that he had sent agents to England, and that others would go to France, to purchase arms, and this fact was communicated to the British Foreign Office, which interposed no objection. Yet in October of the same year Earl Russell entertained the complaint of the United States' Minister in London, that the Confederate States were importing contraband of war from the Island of Nassau, directed inquiry into the matter, and obtained a report from the authorities of the island denying the allegations, which report was inclosed to Mr. Adams, and received by him as satisfactory evidence to dissipate 'the suspicion naturally thrown upon the authorities of Nassau by that unwarrantable act.' So, too, when the Confederate Government purchased in Great Britain, a neutral country (and with strict observance both of the law of nations and the municipal law of Great Britain), vessels which were subsequently armed and commissioned as vessels of war, after they had been far removed from English waters, the British Government, in violation of its own laws and in deference to the importunate demands of the United States, made an ineffectual

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carrying on board any armament whatever. Three ran for upwards of 1,000 miles, unarmed, without an enlisted crew, without a captain or officers, and incapable of making the slightest resistance had they met with a Federal cruiser. Of these three, the *Alabama* and *Shenandoah* received their armament in Portuguese waters. The *Florida* shipped some guns at an uninhabited island in the Atlantic, but never got a crew, fired a shot, or attempted a capture, till she had found shelter in one of her own ports, from which she issued four months afterwards, armed and equipped for a cruise. The *Georgia* was armed while at anchor on the coast of France. It is true that the armament furnished to these ships was despatched to them from different British ports, pursuant, no doubt, to a preconcerted arrangement in each case, but this neither was nor could have been known to the British Government. That a Government is responsible for the prevention of acts which neither were nor could have

attempt to seize one vessel, and did actually seize and detain another which touched at the Island of Nassau, on her way to a Confederate port, and subjected her to an unfounded prosecution at the very time when cargoes of munitions of war were being openly shipped from British ports to New York to be used in warfare against us. Even now the public journals bring intelligence that the British Government has ordered the seizure, in a British port, of two vessels, on the suspicion that they may have been sold to this Government, and that they may be hereafter armed and equipped in our service, while British subjects are engaged in Ireland by tens of thousands to proceed to the United States for warfare against the Confederacy, in defiance both of the law of nations and of the express terms of the British Statutes, and are transported in British ships, without an effort at concealment, to the ports of the United States, there to be armed with rifles imported from Great Britain, and to be employed against our people in a war for conquest. No Royal prerogative is invoked, no executive interference is interposed against this flagrant breach of municipal and international law on the part of our enemies, while strained constructions are placed on existing Statutes, new enactments proposed, and questionable expedients devised, for precluding the possibility of purchase by this Government of vessels that are useless for belligerent purposes, unless hereafter armed and equipped outside of the neutral jurisdiction of Great Britain."—*Message of President Davis*, December, 1863.

been within its knowledge, is a thesis which few Governments will be willing to maintain.

5. After the case of the *Alabama* no vessel, as to which any representation had been made by Mr. Adams or any circumstance of suspicion existed, succeeded in quitting a British port.[1] Of the two which sailed during that period, one was a merchantman, which never was fitted as a ship of war, here or elsewhere, though she took on board guns, men, and ammunition, off Madeira. It may be questioned whether any law, however stringent, or any exertion of vigilance, could have prevented the sailing of the *Georgia* and *Shenandoah*.

6. Each of these ships was commanded and officered by Americans holding commissions in the Confederate navy, and was the property of the persons acting as the Government of the Confederacy, by whose agents she had been bought and paid for. It is possible—though there is no proof of this—that in one case or more the name of the nominal British owner may have remained on the register; but this fictitious ownership would not give British nationality to the ship, would not have protected her from capture as Confederate property, whilst unarmed and uncommissioned, and could fasten no responsibility on the British Government. None of the men serving in them appear to have been enlisted

[1] It is with reference to this period, during which occurred the seizure of the *Alexandra*, the iron-clads, and the *Pampero*, that Mr. Fish says: "The Queen's Government sat with folded arms, as if unmindful of its international obligations, and suffered ship after ship to be constructed in its ports to wage war on the United States," whilst, "strange to say," the questions which had arisen were argued in courts of law. Mr. Fish appears to be quite astonished that people should have patience to argue and consider a question of public and private right carefully and thoroughly in a court of justice. Parliament, says he, could have settled it in a trice, and could, I presume (for the observation goes that length), have condemned the *Alexandra*—which remained all the while under seizure—without a trial. The point of his argument, however, is that the British Government did nothing, sheltering itself under the uncertainty of the law—an assertion which is so far from being true that it is directly the reverse of the truth.

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in this country. Some, doubtless, of those who were carried to sea in them were not unaware of the service in which they would be asked to engage; but, setting these aside, the evidence conclusively shows that the Confederate agents did exactly what we should have expected them to do: they shipped all the men they could pick up in the streets of Liverpool or elsewhere, hiring them for fictitious voyages, and trusting to secure them, when once fairly afloat, by working on the thoughtless, adventurous character of the seaman, and by the offer of high pay and bounty. In the case of the *Alabama* this manœuvre was very successful, since out of ninety men seventy took service; but we have seen how completely it was disappointed in those of the *Shenandoah* and *Florida*.

This plain statement disposes of the allegation, which is substantially urged by the Government of the United States, that the course of the British Government in respect of these enterprises was one of passive connivance, or of systematic and persistent inaction. It shows that, during the time when this Government is accused of having remained passive, ship after ship was detained and seized by process of law, where evidence could be obtained, and, where this was impossible, at the cost of the national treasury. It shows that from the summer of 1862 to the end of the war no vessel on which suspicion had fallen, none with anything warlike in construction or equipment, was suffered to leave a British port, and that the two which sailed during that period and afterwards cruised under the Confederate flag had escaped the vigilance of the Minister and Consuls of the United States, as they had escaped that of the British Government and its officers.

The solitary case of any real importance is that of the *Alabama*. On the degree of importance which may fairly or properly be assigned to a particular case, the general course of the Government having been such as we have seen it was, I shall say nothing. The case

itself, however, raises some questions of principle, which are not undeserving of attention.

It was known to the British Government, long before she sailed, that this vessel was apparently designed for war; and there was strong reason to suspect that she was intended for the Confederate service. Evidence on this latter point, which might have satisfied a jury, was in the possession of the Commissioners of Customs at the earliest on the 22nd July, at latest on the 23rd. As to the destination chosen for the ship and the scheme for sending her officers and armament to meet her, these were matters which neither the Government nor its officers knew or had any means of knowing. They are therefore to be rejected from consideration in judging of the acts or omissions of the Government. In forming such a judgment, we are bound to regard the case exactly as we should have regarded it if the *Alabama* had gone to arm herself, not at Terceira, but at Savannah or Mobile.

The question whether there has been an international wrong resolves itself into two, which should be kept distinct:—

1. Is it among the international duties of a neutral Government to prevent the despatch from its ports of vessels apparently designed for war, but unarmed, which it has reason to believe constructed or intended for the service of a belligerent?

2. Did the British Government neglect that duty?

If there was no such international duty, it is immaterial whether the Government was or was not hesitating, dilatory, or remiss in enforcing English law. There can be no international injury where there is no violation of an international duty. To the question, whether there is such an obligation, I shall revert presently. I desire first to say a few words on the question of neglect.

Injurious remissness or injurious inattention on the

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part of a Government is not merely something less than the greatest possible promptitude or the greatest possible care. If it were, what Government could ever hope to be free from accusations and complaints? To determine, however roughly, by general rules, the degree of care which it is fair to require in particular cases, has always been a difficulty with lawyers; in the great mass of cases the real (though not perhaps the avowed) standard of decision is found in the sentiment of justice and common sense, guided by a consideration of the circumstances.[1] Difficulties of a peculiar kind arise when the party charged is a sovereign Government, and the substance of the charge is negligence or remissness in the exercise of any of the powers of sovereignty. These difficulties do not spring only from the facts that the control exercised by a Government over its subordinates, through all the grades of a great administrative service, must always be practically imperfect, and that Governments differ infinitely in respect of their power, the

[1] "Le dommage qui a eu lieu," says Ortolan, speaking of the liability under municipal laws, for injuries, intentional and unintentional, "peut être le résultat soit d'actions, soit d'omissions préjudiciables: force impulsive dans un cas, simple inaction dans l'autre. Or l'on conçoit que si l'homme est généralement tenu de s'abstenir de toute action nuisible à autrui, il n'est pas également obligé de mettre son activité au service d'autrui, de veiller pour les intérêts d'un autre, et de répondre en ce point des résultats de son inaction. Mais des contrats, ou certaines relations particulières, peuvent venir lui imposer même cette dernière obligation, lui en faire un devoir; de telle sorte qu'y manquer soit pour lui une faute."—Ortolan, *Explication Historique des Instituts*, vol. iii, p. 355.

It must be borne in mind that the international duty now in question, the limits of which are, as we shall see, open to dispute, does not flow from the theory that Governments are responsible for the wrongful acts of their subjects, or of persons within their dominions. They are not so responsible in general, as long as they allow the injured party free access to their courts of justice; unless the acts complained of were done in execution of the orders of the Government, or afterwards adopted by it as its own. It is a practical corollary of the exclusive control which all sovereign Governments claim over their own territory—a claim which might otherwise be incompatible with the security of their neighbours.

machinery at their command, their habitual modes of acting, and their subjection to opinion or to law; they are due also to the consideration that the first responsibility of every Government is to its own people, and that to hold any Government strictly accountable to others for its acts and omissions, for the orders it gives to its officers, and the manner in which its powers are exercised, would be inexpedient and intolerable in practice. Hence it has not been usual, in international questions, to scrutinize narrowly the circumstances from which negligence might be inferred; and complaints of actual negligence have been urged but rarely, and with a view rather to security for the future than to reparation for the past. These considerations are, indeed, plain and obvious, and the Government of the United States is probably not insensible to them, since it is at pains to insist that the neglect with which it charges the Government of Great Britain was "gross," "inexcusable," and "extreme,"—"equivalent or approximate to evil intention."

It must be clear, I think, to any one who has read the preceding chapter that the delay—for there was delay—in ordering the seizure of the *Alabama* was really due, in the first place, to uncertainty as to the law, and, in the second place, to doubts about the sufficiency of the evidence. The Revenue Department appears to have acted on the opinion held by its legal advisers, that it was not the duty, nor in the power, of the Executive to seize a vessel which had received no armament, although apparently constructed for war. The Law Officers thought otherwise. They reported that the *Alabama* was liable to seizure for a breach of the Foreign Enlistment Act, though no arms had been put on board. But was the question free from doubt? On the contrary it was so doubtful that it divided at the time some of the most considerable lawyers in England, and afterwards divided the Judges of the

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Court of Exchequer.[1] As to the sufficiency of the evidence opinions may fairly differ, but this was certainly a question on which the Government had a right to be guided by that of its legal advisers, who were not only

[1] The subjoined Opinion was afterwards given, on a full consideration of all the facts, by the eminent persons whose names are attached to it, and who rank among the highest English authorities:—

"I am of opinion that Messrs. Laird had a right to build the ship which has since been called the *Alabama* in the manner they did, and that they have committed no offence against either the common law or the Foreign Enlistment Act with reference to that ship. I am of opinion that the simple building of a ship, even although the ship be of a kind apparently adapted for warlike purposes, and delivering such ship to a purchaser in an English port, even although the purchaser is suspected or known to be the agent of a foreign belligerent Power, does not constitute an offence against the Foreign Enlistment Act, 59 Geo. III, cap. 60, sec. 7, on the part of the builder, unless the builder makes himself a party to the equipping of the vessel for warlike purposes. The *Alabama*, indeed, appears to me to have been equipped at the Azores, and not in England at all.

"GEORGE MELLISH.

"3, Harcourt-buildings, Feb. 6, 1863."

"We entirely concur in the opinions given by Mr. Mellish on the statements laid before him, and our opinion would not be altered if the facts were that Messrs. Laird Brothers knew they were building the *Alabama* for an agent of the Confederate Government.

"H. M. CAIRNS,

"April 17, 1863." "JAMES KEMPLAY.

The builders of the ship, in a statement which they subsequently published in their own vindication (*Times*, 27th May, 1869), wrote as follows:—

"The contract to build the *Alabama* was entered into by us in the usual course of our business as a mere commercial transaction, and at a price moderate for vessels of her class, the firm which we now represent having for upwards of thirty years been in the habit of building vessels of war for our own Government, for foreign Governments direct, and for the agents of foreign Governments. . . . . .

"We did not supply, or engage to supply, the *Alabama*, either before or after she left the Mersey, with any part of her armament, provisions, coals, or warlike stores of any description, or engage any men to serve on board her, or to join her after she left the port.

"We merely completed a contract to build and deliver an unarmed and unequipped ship in the port of Liverpool.

"We were never informed by the purchaser of the *Alabama* of the arrangements he had made for manning, arming, equipping, and commissioning that vessel at a foreign port, nor had we any idea of her

advocates, but advocates standing at the head of their profession. It is also possible – it certainly appears more than possible, though we do not know the circumstances—that the report of the Law Officers might, with greater despatch, have been obtained a day or two sooner than it actually was.[1] But this would

having gone to the Azores until that fact was generally known by the public. . . . . .

"It has been stated that in the conduct of our business in these transactions we sought our own gain irrespective of municipal or international law, thereby endangering the relations between this country and America. The opinions of the eminent statesmen and lawyers we have quoted show the building of *Alabama* to have been in accordance with the existing laws of England, and in 1861, when we undertook the contract, and for long after, there was nothing to show that our doing so was at variance with the opinions of our own countrymen or with the practice of foreign nations.

"But in 1864 other questions had arisen as to the rights of neutrals and belligerents, which rendered it apparent that a strict interpretation of the existing law would not satisfy those whose interests were affected, and in that year we declined to accept an order to build a large iron-clad vessel for an agent of the Confederate Government, although one condition of the contract was to have been that the ship should not be delivered until the conclusion of the war. The cost, however, was to be paid to us by instalments, in such a way and so secured as to make it for us a perfectly safe and profitable commercial transaction, and we were advised by the best authority that there was nothing in our municipal or international law to prevent us taking the contract. Our private gain here was willingly sacrificed, because we felt that, from the complications that had arisen in reference to neutral and belligerent rights, a strict interpretation of the law might tend to aggravate the then existing differences between this country and the American Government, and had there been the same feeling on the subject in 1861 the *Alabama* would not have been built by us."

[1] Mr. Adams, in a despatch to Mr. Seward (1st August, 1862), mentions an interview in which Lord Russell "remarked that a delay in determining upon the case had most unexpectedly been caused by the sudden development of a malady of the Queen's Advocate, Sir J. D. Harding, totally incapacitating him for the transaction of business." There is no other mention of this, I believe, in the printed correspondence; but it is well known that Sir J. Harding, to whom, as Queen's Advocate, the case would, according to what was then the established practice, be sent in the first instance, was at that time suffering from an attack of mental disease, from which he never quite recovered, and that this may have caused some delay in the transmission of the papers.

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not be a sufficient ground for charging a Government with negligence so gross and palpable as to amount to a great international wrong. It cannot be assumed, nor is it very probable, that any orders sent after the ship left the Mersey would have been effectual in stopping her, even if it had been known, otherwise than by vague report, where she was likely to be found.

Whether upon these facts, and assuming that it was an international duty (the circumstances being known) to prevent the sailing of the *Alabama*, there is fair ground for charging the British Government with gross and injurious negligence, is a question on which perhaps neither an Englishman nor an American has a right to place implicit confidence in his own judgment. The American Government holds it "so clear that no room remains for debate," and ought to be always "taken for granted" hereafter. I have not the same confidence in my own opinion, but I know not why I should refrain from saying that the charge appears to me, on the contrary, rash and unreasonable.

On the supposed international duty the remarks which I have to make may be conveniently thrown into the form of distinct propositions:—

1. Neutrality is the condition of a Power which is at peace with two or more Powers at war with one another; or, more exactly, it is the relation which the former holds to the latter. The Power which continues to be at peace is *neutrarum partium*, or neutral. The general consent of nations, evidenced by their practice—in other words, international law—has traced out, roughly and imperfectly, but with a gradual approach to precision, the rules of conduct which a neutral must pursue if he would not forfeit the character of a neutral for that of a belligerent. Hence spring what are called the duties or obligations of neutrality.

2. No precise theoretical definition of these obligations is possible. The rules of international law on this subject are really an endeavour, more or less successful,

to accommodate, in a manner conformable to justice and general convenience, the necessities of war and the interests of peace. So far as they go, they must be taken as the accepted standard of right and wrong in this matter. If these fail, as they may, to furnish a principle of decision applicable to a particular case, we are left to apply such deductions as may be drawn by fair reasoning from the relation of neutrality itself.

3. It has not hitherto been judged reasonable or expedient that neutral Governments should be held bound to restrain their subjects from trafficking with belligerents in munitions of war, or from eluding blockades. The usage of nations leaves the belligerent free to take advantage of these enterprizes so far as they serve his turn, and to repress them as well as he can so far as they assist his enemy, arming him for this purpose, at the expense of the neutral, with two important powers, the power of visit and search on the high seas and that of capture and condemnation. The circumstances of a particular war may render such adventures very difficult, or very easy—exceptionally serviceable to one belligerent, peculiarly troublesome to another; but it does not on any of these accounts become the duty of the neutral Sovereign to stop them, nor is he chargeable with unfriendliness or negligence for not attempting to do so.

4. To the use of neutral territory as a base or point of departure for hostile expeditions by land or sea, other considerations apply. The injury here is direct and immediate; and it is one which may ordinarily be prevented, without minute or oppressive interference, by the use of those measures of police which are at the command of all civilized Governments. Such measures a Sovereign who claims to remain neutral is bound to employ. It is a duty, indeed, which does not arise for the first time during war, nor out of the peculiar relation of neutrality; and, when we class it among

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neutral obligations, we mean that war does not annul or suspend it, and that it adapts itself to the new state of circumstances which war creates. Neglect, or the wilful omission without reasonable excuse, to employ these means is a just ground of complaint, and, if persisted in after suitable remonstrance, may become a just cause of war.[1]

5. To constitute an expedition by sea, these things are necessary:—

A ship or ships capable of being used for war;

An armament, greater or less;

A present intention that the ship and armament shall be used for war.

Till these are combined, there can be no such thing as a hostile expedition. Uncombined, they are the materials or separate elements of an expedition.

6. The violation of neutrality is complete at and not before the time when the ship leaves the protection of neutral waters. Acts done before that time may be completed offences against the municipal law of the neutral State, but they are preparations only for a violation of the law of nations, which, should the ship sail disarmed, or never sail during the war, would not be committed at all. Acts done afterwards, out of the control and not under the orders of the neutral Government, cannot fasten a responsibility on that Government, though they may aggravate the weight of a responsibility previously incurred.

7. A hostile intention is commonly to be presumed, and conclusively presumed, where a ship, equipped and

[1] There may be cases in which a neutral Government fails to fulfil its obligations from no want of care or of honest intention, but out of sheer feebleness. Such cases may well be imagined, and have in fact occurred. It would certainly be oppressive and unreasonable, in a high degree, to urge a claim for compensation on a neutral whose only fault has been inability to offer effectual resistance to overwhelming force. But it must be added that a State which declares itself too weak to discharge ordinary neutral obligations, may well be deemed to have renounced its claim to ordinary neutral rights.

armed for war, sails under the orders or control of a belligerent Government. Where, on the other hand, she is *bonâ fide* neutral property, and under the control of her neutral owner, such a presumption may be raised by circumstances (as by destination for a belligerent port), but can never be conclusive.

That the duty of the neutral is at least as extensive as this, is admitted on all hands. But it has lately been contended that it goes much further. I cannot state precisely, since I do not clearly understand, how far it is proposed to carry the extension of the rule. But I will state it as well as I can.

It is affirmed to be not necessary, in order to constitute a violation of neutrality for which the neutral nation is responsible, that the ship should be capable of engaging in hostilities when she leaves the protection of neutral waters, or that she should have received any armament at all. It is enough if she be apparently designed for war—perhaps I ought to say, if she be suitable or serviceable for war — provided there be evidence to prove, or reasonable ground to suspect, a hostile intention. At any rate, this is so where she is built, or built and fitted for sea, in the neutral port, with an intention or understanding that she shall be employed in hostilities, or under a contract with a person who intends so to employ her. Any person working under such a contract works with an intent which is (at least constructively) hostile; and the intent, coupled with any work that fits the ship for the purpose, constitutes the violation of neutrality. By writers who insist on this, or at any rate by some of them, it is at the same time maintained that a ship built for war, fully armed for war, equipped and provisioned for sea, may be produced as an article of commerce, and either sold to a belligerent in a neutral port, or sent abroad to a belligerent port for sale, without any violation of neutrality, provided she were not built or equipped to order or in pursuance of an understanding with the belligerent purchaser.

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Again, where ship and armament are sent to meet one another at a place out of the neutral territory, in execution of a preconcerted plan, the two acts, it is said, are to be considered as parts of one transaction, which the neutral Sovereign is bound to prevent, and for the non-prevention of which he is responsible. "The intent," says an able writer, "covers all cases, and furnishes the test. It must be immaterial where the combination is to take place, whether here or elsewhere, if the acts done in our territory—whether acts of building, fitting, arming, or of procuring materials for those acts—be done as part of a plan by which a vessel is to be sent out with intent that she shall be employed to cruise."[1]

The question, it will be here observed, is not whether the views which I have endeavoured to express would be a useful extension of a settled and accepted rule; but whether they are a fair and just interpretation of the rule as it has hitherto existed, or legitimate deductions from it, or legitimate deductions from the general principles of neutrality in a case where there is no accepted rule. It is necessary to contend that, as interpretations or deductions, they are so plain and certain that a Government which has not acted on them, or has even hesitated at first to act on them, and that in a case where the evidence of a hostile intention did not go beyond a strong probability, is responsible for an injury, which it is under an obligation to redress. I think that, as interpretations or deductions, they are not fair and legitimate; and that opinions not fortified by any settled practice, on which competent authorities are notoriously at variance, cannot be regarded, in an international controversy, as plain and certain. In truth, they have never even been stated with any approach to precision, and it remains to be seen whether they are capable of being so stated.

[1] Dana's *Wheaton*, p. 563, Note.

If a distinction is to be made between vessels serviceable for warlike use and other vessels, where, it may be asked, are we to fix the line? Of the Confederate cruisers during the late war not one—not even the *Alabama* herself—was designed to fight, unless in self-defence, and every one (with the exception of the *Alabama* and *Florida*, which were both sunk) had either been originally converted from a merchantman, yacht, or passenger-ship, into a cruiser, or was finally converted from a cruiser into a merchantman. The capacity for stowage, arrangement of the internal space, height and strength of the bulwarks, solidity of the upper works, width of the hatches, size and character of the spars—these characteristics, and such as these, whilst they will enable a practised eye to discern whether a ship is meant for war or for trade, will not serve to discriminate vessels capable of being used for the one from those capable only of being used for the other.[1] Any stout, speedy ship may, with the help of a little carpenter's work, be used for taking prizes: the *Sumter*, which struck terror into American merchants and shipowners, was neither stout nor speedy. The responsibility of the neutral Sovereign would, therefore, extend to any ship, not proved incapable of warlike use, which he might suffer to leave his ports, armed or unarmed, if there were probable ground to conjecture that she was intended for the service of a belligerent. The hostile purpose, it must be observed, would exist in a case where the belligerent

[1] When the *Shenandoah* visited Melbourne, competent and not friendly observers, of naval experience, who went on board of her, could find nothing, even in her fittings, to distinguish her from a common trading ship. She was an ordinary merchantman, they said, armed with guns, and very much undermanned. Captain Waddell himself, in haranguing the men at Porto Santo, had described the capabilities of his ship with engaging candour:—"I don't intend to fight; any one can see that this vessel was not made to fight; I intend to run away rather than fight, unless in a very urgent case."

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intended to take her into one of his own ports and arm her there, just as much as if she were to be armed at an uninhabited island, or in the ports or on the coasts of another neutral state, or even on the high seas; nor, indeed, would it be possible to ascertain or discern his intentions in this respect.

What, again, is really meant by saying that, where the ship and the ship's armament are despatched by preconcerted arrangement, the two transactions are to be considered as one? Why is it more unlawful to send abroad guns meant for a particular ship than guns meant for any ship which may be in want of them; and why is the fact, or the suspicion, that a cargo of arms is despatched with a view to a particular vessel, which is despatched from the same or a different place, in the same or a different country, at the same or a different time, to fasten any peculiar responsibility on the neutral Power? If it should appear that the Government of the United States had bought at Halifax a light vessel suitable for a blockader, and procured in the same or some other British port guns to arm her with, has the Federal Government violated the neutrality of Great Britain, and did Great Britain incur a responsibility for it towards the Confederate States?

It is evident that the importance which this theory attributes to proof of pre-concert is false and erroneous. A prohibition against arming ships or suffering them to be armed in British territory is not, and cannot possibly be, either infringed or evaded by arming them or suffering them to be armed within the dominions of Portugal or France; and proof that both ship and armament were obtained in England, and that they were respectively transported to France or Portugal in order to be put together, is proof of a fact which is nothing at all to the purpose.

It is equally clear that proof of an intention hostile in fact, or constructively hostile, in the builder of a ship

or his workmen, or in the maker or purveyor of guns or ammunition, has really little or nothing to do with the question whether the belligerent nation has sustained injury from the neutral. To the United States it was of no consequence at all what were the intentions of Laird or Miller, or their riggers or ship-carpenters, or whether these persons or any of them were animated by partiality to the Confederates, or were merely working, in the exercise of their respective trades, for what they could get. What was of consequence to the United States was the intention with which the vessels were despatched from England by those who had at that time the real control of them. This unquestionably was a matter of the highest consequence, since on this it depended whether they were more or less dangerous, or not dangerous at all, to the American mercantile marine. Nor did it matter to the United States whether the vessels were purchased ready-made or were built to order. If the *Stonewall* had been really built for the King of Denmark, the *Georgia* for the China trade, and the *Florida* for Messrs. Thomas of Palermo, and respectively sold to the Confederates before they left the Bay of Quiberon, the Clyde, and the Mersey, the injury, if any, sustained by the United States through the despatch of those vessels from French and British waters would have been neither greater nor less than it was under the actual circumstances of the case. In a word, as between nations, the intent which impresses on an armed ship despatched from a neutral port the character of a hostile expedition is the intent which governs the despatch of the ship, not the intent which presided over its preparation.

These misconceptions have arisen from a confusion, into which it is very easy to fall, between the obligations which a citizen owes to his State and those which one State owes to another—between the "neutrality laws" (as they are called) of particular nations, and the international law of neutrality. It has been usual with

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text-writers and advocates, when in want of a direct authority, to draw examples and arguments from cases which have arisen under municipal law, and apply them to cases arising under international law—a practice legitimate if the distinction between the two be kept steadily in view, but otherwise very liable to mislead. By a neutrality law, certain acts which individuals may commit are made *offences*, in order that the nation may not find itself betrayed unawares into the commission of an *injury*. The law therefore regards, as all penal laws must, primarily and chiefly, the intent or culpable inadvertence out of which the act is done; and the intent which it regards is that of the particular person who is accused of doing the particular act which the law prohibits. But in international wrongs—as in the wrongs which men may do to one another, considered not as meriting *punishment*, but as creating a right to *redress*—the intent is not the thing primarily or chiefly regarded; and in international wrongs of this particular class the only intent and the only inadvertence which are really material at all are, first, that hostility in the persons who constitute or direct the expedition which makes it noxious instead of harmless; and, secondly, that connivance or negligence on the part of the neutral Government which makes the nation responsible for the noxious enterprise. Further, such laws prohibit, and wisely prohibit, not only actual violations of the neutrality of the State, but acts directly leading to them, or likely, on other grounds, to imperil the friendly relations of the neutral with the belligerent Powers. Thus in England, as in America, the mere attempt to fit out a belligerent vessel, though it may be ineffectual, is an offence against municipal law. But it would be absurd to hold that the despatch from a neutral port of a vessel which somebody had only made an ineffectual attempt to fit out, constituted an international injury. In short, the neutrality laws of particular States afford no measure of the international

duties of neutrality; nor, on the other hand, do those duties afford a standard for the interpretation of the law. The law may fall short of the obligation, or may go beyond it: may fall short of it when the obligation only partially requires the support of a law—may transcend it when the discharge of the obligation happens, as it well may, to be a part only of the object for which the law was made.

Let me recapitulate. The law of nations as hitherto understood—or, if any one prefer the phrase, the understanding which has existed among nations as to their relative rights and duties—does not prohibit a neutral from supplying to a belligerent ships, whether of commerce or of war, as it does not prohibit the supply of ship-guns and ammunition, without which ships are harmless. How a vessel so supplied was built—where she was built—by whom, for whom, or on what terms she was built; how or on what terms she came into the possession of the belligerent—are questions which, as between nations, are irrelevant and immaterial. Nor is the neutral Government required to satisfy itself that she shall be carried by the belligerent into one of his own ports, nor to make sure that she shall not be armed with guns exported from the neutral country for the purpose. In all these transactions, the neutral country serves only as a place from which engines of war are procured by a belligerent who stands in need of them, and does not serve as a place in or from which the war itself is carried on.

The law of nations does, on the other hand, declare that a country in or from which hostilities are suffered to be carried on, forfeits its right to the character of a neutral. It makes it therefore the duty of the neutral Government to prevent, by the use of such means as Governments may reasonably be expected to have at their command, the despatch of hostile expeditions from its shores. If at the time of its departure there be the

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means of doing any act of war—if those means, or any of them, have been procured and put together in the neutral port—and if there be the intention to use them (which may always be taken for granted when they are in the hands of the belligerent), the neutral port may be justly said to serve as a base or point of departure for a hostile expedition. The only exception to this—and it is really such—is created by the general understanding that belligerent ships of war may be repaired and provisioned in neutral ports, provided they do not add to their armament. This is really an exception, since a cruiser in fact refits herself for war by repairing her engines quite as much as by replacing her gun-carriages. But she is allowed to do the one, and not to do the other. In the case of an unarmed ship the intention may be present, but there are not the means.[1]

Whether recent experience has made it desirable that maritime nations should come to some new understanding with one another on this subject, is a perfectly open question. The results of this experience have been sometimes overstated. It has been said to prove that it is an easy thing for a ship leaving a neutral port, unarmed, to receive her armament immediately, and commence her work of destruction almost within sight of the neutral shore. On the contrary, the foregoing narrative tends to show that this is not easy, since it was never done nor even attempted during the late war, though there was every inducement to attempt it. We have seen that three of the cruisers built or bought in England made a long voyage without armament or crew,

[1] It appears to have been sometimes assumed that by directing the arrest of the *Alabama*, the British Government admitted that to detain her was an international duty. This is not so. When advised (rightly or wrongly) that there was an infringement of the Foreign Enlistment Act, it was the duty of the Government to order her to be detained, without reference to the question whether her departure would, or would not, be a violation of the neutrality of Great Britain.

in quest of an anchorage safe and quiet enough for so long and troublesome an operation as the transhipment of heavy guns and munitions of war. The fourth, which sought the shelter of the French coast, was three nights at work, anchored within a stone's throw of the beach. We have seen, undoubtedly, that a vessel may be built, equipped, armed, commissioned, and employed as a cruiser, without having ever entered a port of the nation under whose flag she sails. Whether it is just and expedient for all nations that this should be prohibited, is an open question: at present it is not prohibited. Yet it is plain also that it is quite possible for one belligerent to draw from a neutral in this manner succours so formidable, so noxious to the other, and verging so closely on an actual infringement of the rule, that the Power suffering from them might be forced, or exasperated, into declaring war against the neutral in self-defence. Some difficulty would, I fear, be found in framing any definite rule, at once satisfactory to belligerents and not oppressive or vexatious to neutrals; and this difficulty would not be diminished by the tendency which has, as I think, been lately evinced by the United States to strain the application of international law, and divert it, to some degree, from its proper office to uses which it is ill-calculated to serve. For it is surely an error to treat rules of this kind as if they had all the sharpness and precision of municipal law, and created the same definite obligations, with the same perfect right to have every breach repaired by appropriate satisfaction. This is not their use or intention, nor are they capable of being so employed. It is expedient for the peace of the world that Governments should take a broad and liberal view of the duties which they owe to one another, and should perform them with ungrudging alacrity. But this would become impossible, should the belligerent, on his part, insist on pressing these duties with the technical strictness proper to an ordinary legal obligation. Vaguely

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defined as they are and must be—embarrassed by many difficulties — encroaching apparently, and tending in reality to encroach, on the internal sovereignty of the neutral, and requiring the frequent exercise of judgment and discretion—they would, if widely construed, and at the same time rigidly enforced, become vexatious and oppressive to all neutral nations, and an inexhaustible source of quarrels. Neutral Powers would be driven in self-defence to confine them within narrow limits, and to watch with the utmost jealousy every attempt to extend them.

Our main practical reliance in this matter is on our own laws and regulations, and on those of other maritime States. By these the general obligations of neutrality are practically enforced; and, being everywhere within the control of a sovereign legislative authority, they can be moulded with a freedom and precision unknown to international law. On this branch of the subject something remains to be said, since the imperfections, real or supposed, of the neutrality law of Great Britain have been more than once referred to in the course of this chapter.

It has been assumed and affirmed on the part of the United States—

1. That our neutrality law is defective.

2. That we have refused to amend the defect.

3. That the defect is or has been pleaded as an excuse for the failure to fulfil an international obligation.

4. That this plea is bad. You are masters, it is said, of your own legislation. If a more stringent law was wanted to enable you to fulfil your international duties, then it was your duty to have a more stringent law.

This last proposition, which is often advanced as if it were a truism, is only true with a qualification. Nations are not bound to be endued with perfect wisdom and foresight; they are therefore not bound to possess laws in which no imperfection can ever be discovered; and,

where the law is such as, in the exercise of ordinary foresight, might be deemed reasonably adequate for its purpose, unforeseen defects, brought to light by unforeseen circumstances, afford a real defence against a charge of injurious negligence.

As regards vessels not armed for war and not carrying arms as cargo—a description which includes every ship that left this country during the war for the Confederate service—the only difference between the neutrality law of America and that of England is that the latter is the more severe of the two.[1] Both are framed on precisely the same model: the American Act indeed furnished a model for the English; but the language of the English

[1] The American Act contains the following clauses, which were introduced in 1817, and which are not in the English Act:—

"Sec. 10. And be it further enacted, That the owners or consignees of every armed ship or vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall enter into bond to the United States, with sufficient sureties, prior to clearing out the same, in double the amount of the value of the vessel and cargo on board, including her armament, that the said ship or vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property, of any foreign Prince or State, or of any colony, district, or people, with whom the United States are at peace.

"Sec. 11. And be it further enacted, That the Collectors of the Customs be, and they are hereby, respectively authorized and required to detain any vessel manifestly built for warlike purposes, and about to depart the United States, of which the cargo shall principally consist of arms and munitions of war, when the number of men shipped on board, or other circumstances, shall render it probable that such vessel is intended to be employed by the owner or owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign State, or of any colony, district, or people, with whom the United States are at peace, until the decision of the President be had thereon, or until the owner or owners shall give such bond and security as is required of the owners of armed ships by the preceding section of this Act."

It will be observed that the first of these clauses applies only to *armed* ships *belonging wholly or in part to citizens of the United States*, and the second to vessels *manifestly built for warlike purposes of which the cargo shall principally consist of arms and munitions of*

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Act, laboured and cumbrous in the extreme, from the anxiety to stop every loophole through which a way of evasion might be found, is more strict and searching than that of the American. It may therefore be fairly assumed to be such a law as ordinary foresight would deem reasonably adequate for its purpose.

The English law, however, though in terms more stringent, appears to have been enforced in practice less freely and readily than the American, the working of which is assisted by a more efficient local machinery (the institution of "District Attorneys"), and is also less embarrassed, perhaps, by the fear of illegally interfering with private rights—a fear always present to the mind of an English public servant, and kept alive by the constant responsibility of every subordinate to his chief, and of the chief of every department to Parliament. Greater reliance is there placed on local officials, and a larger measure of discretion given to them, and the questions of fact on which the legality of a seizure depends are not submitted to a jury.

The British Government, as we have seen, formed the opinion in the winter of 1862 that some amendments "which would have the effect of giving greater power to the Executive to prevent the construction

war. Neither of them, therefore, could have been applied, had they been a part of the law of England, to the cases denounced as violations of neutrality during the late war.

It is stated by Mr. Bemis, an able American lawyer, in a letter published in 1866, that the Act of 1817, when introduced into Congress, was entitled "A Bill to prevent citizens of the United States from selling vessels-of-war to the citizens or subjects of any foreign Power, and more effectually to prevent the arming and equipping vessels of war in the ports of the United States, intended to be used against nations in amity with the United States;" and that the first section prohibited the fitting out and arming by American citizens of "any private ship or vessel-of-war, to sell the said vessel or contract for the sale of said vessel, to be delivered in the United States or elsewhere to the purchaser" with intent to cruise, &c.; but that this section was struck out by the Senate, and the title of the Bill changed. The Act as it was passed contained no such prohibition.

in British ports of vessels destined for the use of belligerents" might usefully be introduced into the Foreign Enlistment Act. The British and American Acts, however, being substantially identical on this head, Mr. Adams was asked to ascertain whether any corresponding amendments were likely to be adopted in the United States. The American Government thought no changes necessary in its own law; and, by the time this answer arrived, Her Majesty's Ministers themselves appear to have become convinced that no difficulty existed in enforcing the law beyond that of procuring evidence. They continued, during all the remainder of the war, to enforce the Act as it stood, and they detained every ship as to which there was any ground for suspecting that she was intended for the service of a belligerent. But subsequent cases—in one at least of which the Executive had to pay for having overstepped the limit of its legal powers—seem to have revived the original doubt; and the whole question was referred in 1867, by Lord Derby's Administration, to Commissioners, who were instructed to consider the "character, working, and effect of the Neutrality Laws of the realm," and report any changes which it might appear desirable to make in order to render those laws more effectual. This Commission, which reported in 1868, advised in effect that the prohibitions of the Act should be enlarged; that the *despatching* of a ship *with knowledge* that she would be employed in hostilities by a belligerent, and the *building* of a ship *with intent* that she should be so employed "after being fitted out and armed either *within or beyond Her Majesty's dominions*," should be embraced within those prohibitions. They added a recommendation, probably of greater practical value, that, where reasonable and probable cause should exist for believing that a ship was about to be despatched contrary to the enactment, or, having been built or fitted out contrary to the enactment, was

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about to be taken out of the dominions of the Crown, power should be given to arrest and detain her, on a warrant issued by a Secretary of State, or, within the limits of a colony, by the Governor; the burthen of proof that no violation of the Act had been committed or was intended, to be thrown, in every case, upon the owner of the ship so arrested.[1]

A revision of the Neutrality Laws of the United States had in 1866 been proposed in the House of Representatives; and the subject was referred for consideration to the standing Committee of that House on Foreign Affairs. The Committee reported on the 25th of July, 1866; and a Bill, partly abrogating the old law, partly re-enacting it with amendments, was introduced by the Chairman, and passed at a single sitting by a unanimous vote. It did not, however, obtain the concurrence of the Senate. The material changes proposed by this Bill, so far as they have reference to our present subject, were:—

1. To remove a doubt suggested by the third section of the Act of 1818, whether the bare "*fitting out*" of vessels, *not armed*, for the naval service of a belligerent was not a prohibited offence, and make it clear that this was not prohibited, and that to constitute an offence there must be both a "fitting out *and arming*."

2. To repeal altogether the two clauses mentioned above,[2] sometimes called the "bonding clauses."

3. To insert a declaration that the Act shall not be deemed "to prohibit citizens of the United States from selling vessels, ships, or steamers built within the limits thereof, or materials or munitions of war the growth or product of the same, to inhabitants of other countries or Governments not at war with the United States."

[1] It is understood that this Report has been under the consideration of the Government, but no attempt has yet been made to legislate upon it.

[2] See above, p. 403, Note.

4. The Bill proposed, further, to repeal the clauses which make it an offence to begin, or set on foot, or provide, or prepare the means for, any military expedition or enterprise, to be carried on from the limits of the United States against any foreign country at peace with the United States, and which authorize the President to employ the military or naval forces of the Republic to prevent such expeditions.

The reasons which led the majority of the Committee to recommend these changes—and which would indeed have warranted changes still more important—are thus stated in the Committee's Report:—

"The repeal or modification of these provisions will be, in the judgment of your Committee, for the interest of the public peace. Their effect now is to perpetuate the subjugation of States without naval force to the will of dominant maritime nations. It may reasonably be assumed that the late bombardment of the South American cities on the Pacific coast by Spain, which has been universally condemned, would not have occurred but for the stringent execution of the provisions of this law by our Government. Had the South American Governments been supplied with materials for defence from the abundant resources of the United States, the invasion of the American waters by the Spanish navy would not have been contemplated. Ships are articles of commerce. They are in no liberal or just sense contraband of war, nor are the materials of which they are made. The recent improvements in naval architecture are such as to diminish the distinctions between merchant-vessels and ships-of-war, and to facilitate the adaptation of one to the purposes of the other. A strong-built, swift-sailing merchant-vessel or steamer could be made with a single gun an effective war-vessel. To prohibit our citizens from building such vessels, or selling materials for their construction, at a time when all nations, except our own, are at war, because they may be employed for hostile purposes by foreign subjects, or to demand bonds in double the amount of vessel, cargo, and armament, and to require officers of the Customs to seize and detain them whenever cargo, crew, or 'other circumstance' shall render probable a suspicion that they are to be so used, and where American citizens are part owners only, is substantially to deprive them of their rights to engage in the construction of vessels or to furnish materials therefor. Considering the limitless capacity of this country in this respect, it is a privilege that ought not to be surrendered except upon grounds of absolute necessity and justice."

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I abstain from any comment on the broad and striking divergence between these two sets of proposals, and between the views of international duty and expediency expressed in the Report of the Committee and those which are insisted upon in the recent despatch of the American Secretary of State. I might be thought uncandid, perhaps, if I were to assume that either the Report or the Bill expressed the deliberate and well-considered opinion of the House of Representatives, or of its Committee on Foreign Affairs. Were I on the other hand to treat them as hasty, ill-considered, and of no significance, I should certainly appear disrespectful.[1]

NOTE.

Earlier American Precedents.

In the course of the correspondence between the two Governments reference was frequently made to some passages in the earlier history of the United States. Generally neutral in maritime wars, with an immense line of coast and an enterprising and adventurous people, it is from the United States more than from any other nation that belligerents have tried to supply themselves with privateers, and have in fact obtained such a supply. The American Government, therefore, and American tribunals, have been compelled to grapple with this question, and the precedents set by them have always been regarded with respect. These precedents are drawn, first, from the war of 1793 between Great Britain and the French Republic; and secondly, from the wars waged by Spain and Portugal respectively against their revolted dependencies in the western hemisphere. Of the number of privateers armed in the ports of the United States against the commerce of Great Britain during the first period, and against Spain and Portugal in the second, we have, as far as I am aware, no authentic account. That they were numerous we know, both from the diplomatic correspondence which is extant, and also from the reports of cases tried in the American Courts. The privateers commissioned by Genet in 1793 are stated to have taken as many as fifty prizes before the end of the summer (*The Foreign Enlistment Act*, by F. W. Gibbs, C.B.,

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[1] The Bill and the Report are criticised sharply and minutely by Mr. Bemis, in a pamphlet which he has been kind enough to send to me (*American Neutrality, its honourable Past and expedient Future*).

1863, p. 13). If we are to credit the representations made by the Spanish and Portuguese Ministers in 1817 and 1818, we must believe that the American coast swarmed with such vessels; that the measures adopted by the Government, anterior at least to the Act of 1818, proved wholly ineffectual; and that no redress could be obtained from the Courts. But these statements were probably over-coloured, as complaints of this kind are apt to be. We know, however, from the reported cases, as well as from the diplomatic correspondence, that most of these privateers were not only fitted out and armed in the United States, but were commanded and chiefly manned by Americans, and that they were in many cases under the ownership and control, not merely nominal but actual, of American citizens. The inadequacy of the Common Law to repress these disorderly proceedings led to the enactment of the Neutrality Laws of 1794, 1797, 1817, and 1818, upon which the legislation of Great Britain has been modelled, with some variations, to which reference has been made above. These laws, however, were but partially effectual. Even after the enactment of the Statute of 1818, which is the present Neutrality Law of the United States, privateers continued to be armed against Portugal, though in diminished numbers.

Prizes made by vessels thus fitted out have been restored, through the agency of the American Courts, when such prizes have been brought within their jurisdiction. The only exception to this occurred early in 1793, when the question first arose, and the Government was embarrassed how to deal with it. On the other hand, the American Government has always steadily maintained that such enterprises fastened no liability on the United States, unless they could be shown to be due to the connivance or culpable neglect of the Government itself, and that in the absence of such proof neither the frequency of them, nor their long continuance, nor the amount of loss which they might inflict on foreign nations, could be admitted as grounds for compensation.

The correspondence with Portugal will be found in the Appendix to the *Official Correspondence respecting the Alabama*, Longmans, 1867.

There are two Treaties in which reference is made to claims of this kind. One is the Treaty of Friendship and Commerce between Great Britain and the United States of 19th November, 1794, and the other the Treaty of 22nd February, 1819, between the United States and Spain, by which Florida was ceded to the United States, and by the IXth Article of which the two Powers reciprocally renounced all claims on one another. That the Spanish claims for compensation were meant to be included within the general terms of this Article is shown by the previous negotiation. Mr. Adams appears to have supposed that such a mutual renunciation is to be regarded as equivalent to an acknowledgment and award of compensation on both sides (*Mr. Adams to Earl Russell*, 20th May, 1865, and 18th November, 1865). This is not so. It is an agreement by each party to abandon its own

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disputed claims, on condition that the other party will do likewise. It is so far from involving an admission of liability that the very object of it is to preclude the necessity for deciding the question one way or the other.

As to the VIIth Article of the Treaty of 1794, its operation is confined by express reference to "cases where restitution shall not have been made agreeably to the tenor of Mr. Jefferson's letter to Mr. Hammond, 5th September, 1793" (a copy of which was annexed to the Treaty). The claims for compensation, therefore, which the Commissioners were authorized to entertain were not claims in respect of all prizes taken by privateers fitted out in American ports, but in respect only of prizes brought into American waters, and of which restitution could have been, but had not been made.

There is a careful account of the circumstances which led to the passing of the American Neutrality Laws, with much information on the whole subject, in a memorandum by Mr. C. S. A. Abbott, of the Foreign Office, which forms part of the Appendix to the *Report of the Neutrality Laws Commissioners*, 1868.

CHAPTER XV.

Cruise of the *Alabama*.—Questions which arose.—Question whether a Vessel supposed to have committed a Violation of Neutrality should be excluded from the Ports of the Neutral.—Question on the Operation of the Regulations of 31st January, 1862.—Confederate Practice of destroying Prizes.—Cases of the *Saxon* and the *Tuscaloosa*.—Regulations of 2nd June, 1864.—Observations on the Practice of Commissioning Tenders.—The *Alabama* arrives at Cherbourg.—Action between the *Alabama* and *Kearsarge*, and Destruction of the former.—Question respecting the Rescue of some of the Survivors by the *Deerhound*.—The *Florida* and *Georgia* at Brest and Cherbourg.—The *Florida* carried off from Bahia.—The *Shenandoah*.

It was, as we have seen, on the 24th August, 1862, that the *Alabama* hoisted her flag. She cruised for some time off the Azores, then made for the coast of New England, approaching within two days' sail of New York, and touched in November at Martinique. Here she was received, as the *Sumter* had been, in the character of a Confederate man-of-war; and here, also, she escaped from a Federal cruiser, as the *Sumter*, under the same commander, had done before. The *San Jacinto* arrived whilst the Confederate ship lay at anchor in the harbour, and was as unfortunate as the *Iroquois* in missing a golden opportunity—an opportunity, indeed, of doing a far more important service than the *Iroquois* would have done had she captured the *Sumter*. Following the example of the captain of the *Iroquois*, the commander of the *San Jacinto* remained off the mouth of the harbour in order to avoid detention; and the *Alabama*, a faster vessel of far inferior force, slipped away without difficulty during the night. Off Galveston, in January 1863, she engaged and sunk the Federal war-steamer *Hatteras*, one of the squadron

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employed in the blockade of that port; afterwards visited Jamaica, where she remained five days; proceeded thence to the coast of Brazil; and from Bahia struck across the Atlantic to the Cape of Good Hope, which she reached at the end of July. In the neighbourhood of the Cape she remained till September, when she departed for a cruise in the Indian and China seas.

The Federal Government had made vigorous but ineffectual efforts to prevent the admission of the *Sumter* into neutral ports, on the plea that her employment was piratical. To contend with anything like plausibility in the second and third years of the war that a ship commissioned by the Confederate Government ought to be treated as a pirate, was plainly out of the question. But it was suggested that the *Alabama*, having been built and sent to sea in violation of the neutrality of Great Britain, ought to be seized if she ventured within British jurisdiction, and ought at any rate to be excluded from our ports, although she was received in those of other neutral nations. Whether the despatch of the *Alabama* from Liverpool really violated any rule of British or of international law, is at the least a doubtful question. Her arming in Portuguese waters was certainly an offence against Portugal. But there is no doubt that, had the whole series of transactions which finally placed her on the ocean armed, manned, provisioned, and commissioned for war, been within the knowledge of the British Government, and within its power of control, she would never have left the Mersey; and that this was understood or suspected by the Confederate agents is proved by the concealment which masked her true ownership, and by her hurried and clandestine departure. Yet the Government could not have refused to regard her, when once commissioned, as a public ship-of-war, without departing either from the principle of neutrality which Great Britain had adopted in common with every other maritime State, or else from a settled usage, in the

maintenance of which all maritime States have a common interest. To be neutral it was necessary, as we have seen, to treat the Confederate Government as a Government in matters immediately connected with the war; and, between Governments, it is an established and salutary rule that a commission duly issued by competent public authority incorporates a ship, whatever her previous history, for all purposes, into the armed forces of the Power in whose name and by whose authority the commission runs. That Power assumes the responsibility for all prior claims on her, as well as for all that she may do whilst sailing under its flag; and any act of force exerted against her is exerted directly against that Power. From this it by no means follows that such a vessel may not be excluded, after due warning, either general or special, from the ports of a nation whose neutrality she has been the means of infringing. Every Sovereign has a general right to exclude from his ports either all ships-of-war, or any particular ship, or to impose on admission any conditions he may think fit; although the exclusion of a particular ship would be unjust and offensive unless reasonable grounds could be shown for it, and unless the Sovereign were prepared to apply the same rule indifferently to all Powers, great and small. And the exclusion during war of a vessel belonging to one belligerent for reasons which the neutral was not prepared to apply to the other, would be a breach of neutrality, as well as an act of injustice. It may be added that to exclude an offending ship—whilst it is something short of a downright demand for reparation, and though in itself it may be a proper and reasonable mode of checking offences which could only be directly chastised by war—is a measure likely to be embarrassed by some difficulties. These arise both from the fact that the neutral Sovereign must constitute himself the judge of the question whether there has been an offence or no, and enforces his own judgment by a process which is in

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its nature peremptory, and still more from the circumstances under which hospitality is commonly sought. Stress of weather, injuries sustained at sea or from mere wear and tear, the necessity for repairs, for sustenance, and even for fuel when fuel is indispensable for locomotion, are pleas to which it is hard to turn a deaf ear; and the ordinary hospitalities of a port consist in furnishing these things. These considerations would alone be sufficient to show that to refuse hospitality to a belligerent vessel which has been guilty of some infraction of the laws of neutrality, though it may be the right, can never be treated as the duty, of the neutral. But in truth there is no foundation for such a duty. The belligerent who contrives to arm himself in a neutral port commits no offence against his enemy. His offence is against the neutral Sovereign; and it is for the neutral Sovereign to choose his own mode of resenting it—to accept, if he pleases, an explanation or apology—to confine himself, if he will, to simple remonstrance, or, according to his judgment of the circumstances, to pass it over altogether. He is not answerable to the other belligerent for the exercise of this discretion; nor does he, by exercising it in one way rather than in another, incur a constructive responsibility (which would be merely fictitious) for a connivance or culpable neglect of which he never was in fact guilty.[1]

[1] There is, on the other hand, a recognized duty to restore prizes captured by a vessel which has been fitted out, or has increased her armament, illegally, provided they were captured during the cruise with a view to which the illegal outfit or augmentation was effected, and are brought within the jurisdiction of the neutral Power. The exclusion of all prizes from British ports prevented this question from arising during the late war. Had it arisen, the question whether there had in fact been an illegal outfit would have come before a Court of Admiralty.

It would be erroneous, I conceive, to contend that the taint of illegality, if any, adhering to the *Alabama*, was ever "deposited," as the phrase is, by the termination of her original cruise. She never made but one cruise, which began when she hoisted her flag off Terceira and ended when she struck it off Cherbourg.

I have referred above to the practical difficulties which surround every attempt to deny to ships not actually hostile the ordinary hospitalities of a friendly port. It is, indeed, because the perils and mischances of the sea, to which all are exposed alike, are so many, so capricious, and so tremendous, that even the belligerent cruiser, bent on an errand of hostility, is permitted by universal consent to obtain in a neutral port necessary shelter and the means of prosecuting her voyage. The introduction of steam-power seems to have at once diminished and increased these difficulties—diminished them by enabling ships to go to sea without waiting for a wind; increased them by making machinery, which is liable to want repairs, a part of the apparatus of navigation, and by rendering cruisers dependent not only on canvas but on coal. These remarks are illustrated by the experience of the late war. During the first few months of it, no restriction appears to have been placed on the coaling of belligerent vessels in neutral ports. But the British Government, in January 1862, issued, as we have seen, a series of regulations designed to prevent the ports of the Empire from being used by either belligerent as cruising stations or for cruising purposes.[1] These orders appear to have been enforced with a reasonable degree of strictness; but it must be owned that to enforce them was not always easy: a vessel which had obtained repairs and coal sufficient to find her way home could not be prevented from afterwards continuing her cruise; nor could she always be prevented from presenting herself, within the period of three months limited by the orders, at another colonial port where she was a stranger, and getting a fresh supply. Again, the quantity of coal which a vessel requires depends very much on the weather she encounters; head winds and a heavy sea will soon exhaust her stock. And what was to be considered the nearest home port of a Confederate

[1] See above, p. 137.

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cruiser, when all her home ports were blockaded or in the enemy's hands? Colonial authorities, to whom the arrival of a belligerent ship was always a most unwelcome event, especially if she flew Confederate colours, must have been occasionally tormented by such petty difficulties as these. The proper construction of the orders doubtless was, that a vessel which had coaled in one British port should not be suffered to replenish her stock in another, if it should appear to have been consumed, not in making for a definite destination, but in cruising; that some allowance must be made for stress of weather; and that no favour or exemption could be granted to a Confederate ship on the mere ground that all the ports of her own country were under blockade. This was the fortune of war, and could give her no claim to any special privilege.[1]

[1] The subjoined correspondence supplies a specimen of this class of questions:—

Commander Baldwin, U.S.N., to Sir P. Wodehouse.

"Sir, "'*Vanderbilt*,' *Cape Town, October* 22, 1863.

"I have the honour to make known to your Excellency the arrival here of this ship.

"I have come to this harbour for the purpose of making some necessary repairs to my machinery, and also to get a supply of fuel.

"I therefore ask your Excellency's permission to lie here for the above-mentioned purposes the necessary time, say, from four to six working days.

"I have, &c.

(Signed) "CHAS. K. BALDWIN."

The Colonial Secretary to Commander Baldwin, U. S. N.

"Sir, "*Colonial Office, October* 23, 1863.

"I am directed by the Governor to acquaint you, that he has given his best consideration to the letter which he had the honour of receiving from you yesterday, as well as to the verbal representations you made to him relative to the issue of coals to American vessels-of-war by the 'special permission' of the Governors of other British colonies, as an exception to general directions of the British Government on the subject.

"Looking to the stringent nature of the instructions he has

The Confederate cruisers, vagabonds throughout their career on the surface of the ocean, were put to sundry

received, the Governor entertains some doubt whether the authority to grant 'special permission' be really vested in himself. But he considers that there are special circumstances affecting the ship under your command sufficient in themselves to guide him in dealing with your application.

"It has been the unvarying desire of Her Majesty's Government to abstain, as far as practicable, from affording to either of the parties engaged in the American civil war assistance in the prosecution of hostilities towards each other; and accordingly, in regulating the issue of coals at British ports to their ships-of-war, the object has manifestly been to restrict those issues to the supplies needed for carrying them to some defined destination in foreign parts, or from some foreign port to their own country, and not to facilitate their cruising for an indefinite period for purposes of the war.

"Applying this principle to the case of the *Vanderbilt*, the Governor finds that on her way from South America to the Cape she coaled at the British colony of St. Helena; that shortly after that she coaled again at Simon's Bay; and that after remaining in the neighbourhood of our ports for a time, she proceeded to Mauritius, where she coaled again, and then returned to this colony.

"It is also matter of notoriety that the object of her movements has been to intercept the Confederate cruisers which have lately visited our shores. Under these circumstances, with the information now before him, the Governor believes that he would be acting in opposition to the spirit of Her Majesty's instructions if he were to grant 'special permission' for the issue of coals within the limited term of three months.

"His Excellency has no objection to offer to your remaining in port for the time required for the completion of indispensable repairs.

"I have, &c.

(Signed) "RAWSON W. RAWSON."

Rear-Admiral Sir B. Walker to the Secretary to the Admiralty.

(Extract.)

"Sir, "'*Narcissus*,' *in Simon's Bay, November* 17, 1863.

"I beg you will inform the Lord Commissioners of the Admiralty that the United States' ship-of-war *Vanderbilt*, after leaving this port on the 11th September last, proceeded to Mauritius, in search, I believe, of the Confederate ships *Alabama* and *Georgia;* not finding either of those vessels, she returned to Table Bay to coal and provision on the 22nd ultimo.

"When this vessel first touched at this port, the Commander

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shifts for coal. The *Alabama* took in her first two supplies at two of the desolate coral islands in the Atlantic, where a coal-ship had been ordered to meet her; the third she got from one of her prizes, which she carried into Fernando de Noronha for the purpose. She obtained supplies also at Bahia, at Simon's Bay, and at Singapore; and she coaled at Cherbourg before going out to give battle to the *Kearsarge*. The transhipment of coal at sea was deemed

requested to be supplied with coals and provisions, which, on the supposition that he had not received any at a British possession for three months, having it was believed come last from Rio de Janeiro, his demands were complied with. It was subsequently ascertained that the *Vanderbilt* had touched at St. Helena and received about 400 tons of coal, all that was there.

"Under these circumstances, with the fact of her having obtained coal at Mauritius, on the question being raised, I expressed to the Governor of this colony my opinion that no further supplies should be given her here, in accordance with the provisions of Earl Russell's letter for the preservation of strict neutrality. The *Vanderbilt* did not, therefore, receive any coal, and left Table Bay on the 27th ultimo, proceeding northward."

Shortly after the above correspondence, the *Vanderbilt* succeeded in supplying herself by seizing and carrying off a quantity of coal (250 tons, valued at 1,500*l.*), the property of a Cape Town firm, found stored at Angra Pequena, the place mentioned in a subsequent note as the scene of the capture of the *Saxon*, which belonged to the same firm. As to this, Lord Russell subsequently wrote to Lord Lyons:—

"As regards the coal taken by the *Vanderbilt* from Penguin Island, Her Majesty's Government cannot doubt that the Government of the United States will immediately make to the owners thereof full compensation for the value of the coal, and for the loss they may have sustained in consequence of the violent act of the Commander of the *Vanderbilt* in appropriating it for the use of that vessel; but you will not fail to call the serious attention of Mr. Seward to the proceeding of the United States' officer, for which no justification or excuse can be discovered in any reports which have reached Her Majesty's Government in regard to those matters which form the subject of this despatch."

It does not appear that any compensation was made. The coal was probably intended for the *Alabama*.

a process too tedious and hazardous to be tried. It appears, however, to have been effected more than once by the *Florida*.

Debarred from carrying their prizes into their own ports, which were under blockade, or into those of neutral Powers, the Confederates early adopted, and continued to the last, the practice of burning them at sea. This is certainly a destructive way of making war; it aggravates the waste and havoc which are inseparable from hostilities directed against private property, and of which the avowed purpose is the temporary ruin of the enemy's commerce. But it is not prohibited by any international law or usage, and it has not rarely been resorted to by captors who, from fear of weakening themselves by sending home prize-crews, or for any other reason, have found themselves at a loss how to dispose of their prey.[1] Happily, a captor under ordinary circumstances needs no other dissuasive than his own interest. He is accountable, however, for the disposal of his prizes to his own Government alone. He is as free to destroy them (if the orders under which he acts

[1] "Aware of the state of incapacity to which some of the British frigates on the station had reduced themselves by manning and sending in their prizes, Captain Broke destroyed all he captured. We believe he had sacrificed not fewer than twenty-five sail of prizes, to keep the *Shannon* in a state to meet one or the other of the American frigates." —James's *Naval History*, vol. vi, p. 197.

I find the following statement in a Memorial addressed in 1814 to the Admiralty by merchants and shipowners of Bristol, praying for protection against American privateers in the British seas:—

"Your memorialists have seen with regret that the American vessels-of-war, private as well as national, have lately adopted a novel and extraordinary practice (particularly as it regards the former) of burning and destroying such prizes as they have no reasonable expectation of getting into port—a system, as your memorialists are informed, sanctioned and promoted by pecuniary rewards from the American Government. And your memorialists are confirmed in their belief of the truth of this information by the great anxiety always shown by the commanders of the enemy's cruisers to get possession of and to preserve the registers and other papers of such vessels as they destroy."

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direct or permit it) as to send them home for sale; and a formal sentence of condemnation, of which the effect is to establish the fact of hostile or constructively hostile ownership, and the chief use to convey a secure title to a neutral purchaser, is superfluous where there is no neutral purchaser and the original owner is confessedly an enemy. Cases might, indeed, arise in which the whole or part of the cargo was either owned by neutrals, or documented at least as neutral property: in such cases—and they were numerous—it was the custom of the Confederate commanders, if they were satisfied that the neutral claim was genuine, to release the ship on a bond being given for payment of a ransom; if they thought it fraudulent, to destroy both ship and cargo. There is no reason to suspect these officers, all of whom, I believe, had served in the United States' Navy, of any wilful misconduct. But it is obvious that a mock adjudication by a naval officer in his own cabin, on a hasty examination of papers, without opportunity for the claimants to be heard or produce evidence, could never be accepted by neutrals as satisfactory; and that a belligerent Government, sanctioning such proceedings and hesitating to make full compensation to claimants who could make out a fair *primâ facie* case, would expose itself to something more than remonstrance.

In only one instance, I believe, did the captain of the *Alabama* make an attempt to turn a prize into money. He sold to a Capetown merchant an American vessel, the *Sea Bride*, which he had captured outside of Table Bay, and sent her to an unfrequented spot on the western coast beyond the limits of the Cape Colony, where she passed into the hands of the purchaser. He deposited also at the same place a cargo of skins and wool, taken from the *Conrad*, a Philadelphia barque in the South American trade; these he had likewise disposed of on the terms that they should be sent to

Europe for sale, and two-thirds of the price paid to the credit of the Confederate Government. But a colonial vessel (the *Saxon*) despatched to remove the cargo was surprised in the act of taking it on board by a Federal war-steamer, which made prize of her and sent her for adjudication to New York.[1]

[1] The owners of the *Saxon* complained to the British Government of the capture of their ship. It was further alleged that the *Vanderbilt* had been guilty of a violation of British territory, the place where the capture occurred having been formally taken possession of, some years before, in the Queen's name, by a previous Governor of the Cape Colony. It also appeared that during the seizure of the *Saxon*, her mate, a young Scotchman, had been shot dead, without the least provocation, by one of the officers of the *Vanderbilt;* and a claim for some compensation was made on behalf of his widow.

On these points Lord Russell wrote to Lord Lyons:—

"As regards the capture of the *Saxon*, as Angra Pequena is not a British possession, but would seem to be a deserted spot, and as the Proclamation of Governor Grey of the 12th of August, 1861, purporting to extend the jurisdiction of the Crown over Penguin Island, was not previously authorized, and has not since been confirmed by Her Majesty, no violation of neutral or British territory appears to have taken place, and the jurisdiction of the United States' Prize Court could not be contested on the assumption of such violation having been committed.

"It seems, moreover, to have been admitted by one of the owners of the *Saxon* to Governor Wodehouse, that the vessel had been actually engaged in taking on board part of a prize cargo landed from the *Tuscaloosa*, for the purposes of conveying it to market as the property of, and on account of, Captain Semmes of the *Alabama*.

"Under these circumstances Her Majesty's Government see no ground for seeking to withdraw the case from the jurisdiction of the Prize Court.

"As regards the murder of the mate of the *Saxon*, I have already instructed you, by my despatch of the 30th of January, to express to Mr. Seward the opinion of Her Majesty's Government that the officer of the *Vanderbilt*, by whom that murder was committed, should be brought to trial without delay; and you will further state to the American Minister that pecuniary compensation to the widow ought to form part of the redress which the Government of the United States should make for this atrocious act of their officer."

A Court of Inquiry subsequently held at Boston came to the conclusion that the shooting of the mate was unpremeditated, and must be regarded as a casualty. The American Government finally declined to

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Out of the capture of the *Conrad*, and the use afterwards made of that vessel by her captor, arose another question, of some interest in itself, though circumstances rendered it practically unimportant. The *Conrad*, a sailing barque of 500 tons, had fallen into Captain Semmes's hands in the latitude of the Canaries, soon after he left Brazil. Judging her fit for employment in the predatory warfare in which he was himself engaged, he had removed her crew, put aboard of her a lieutenant, three inferior officers, and ten men, armed her with two brass rifled 12-pounders which he had taken out of a former prize, christened her the *Tuscaloosa*, commissioned her "as a tender," and sent her cruising, with orders to meet him at the Cape of Good Hope. This occurred in June. The two vessels rejoined one another at the end of six weeks, in Saldanha Bay, the *Tuscaloosa* having in the meanwhile taken a prize; and the latter proceeded to Simon's Bay, the naval station of the Cape Colony, followed by the *Alabama* herself three days afterwards.

make any compensation to the widow, under these circumstances, for the act of its officer.

It may here be mentioned that the capture of the *Sea Bride* was alleged by the United States' Consul to have been made within British waters, and he urged that, having regard to the increased range of modern artillery, the old limit of three miles from shore ought to be held obsolete. This limit, however, though it has become little better than arbitrary, has not yet been abandoned; and the evidence clearly proved that the *Sea Bride* was in fact captured more than four miles from land, and outside of Table Bay.

It was further alleged that she had been brought within the limit after capture, and ought on this ground to be restored. She had, as it appeared, been suffered to drift within two miles of the shore by the inadvertence of the officer in charge of her, who carried her out again as soon as he discovered his mistake. The Governor regarded this —rightly, as I think, though his decision was questioned by the authorities at home—as an act which might be atoned for by an explanation, and did not warrant the seizure of the ship; and it is probable that the United States' Consul would have been of the same opinion had the capturing vessel been the *Vanderbilt* and the captured vessel the *Alabama*.

The appearance of a barque laden with wool and hides, with a crew only sufficient to navigate her and a couple of small guns for her whole armament, and calling herself a ship-of-war, seems to have caused lively dissatisfaction to Sir Baldwin Walker, the English Admiral on the station; and he stated his opinion with some earnestness to Governor Wodehouse :—

"The admission of this vessel into port will, I fear, open the door for numbers of vessels, captured under similar circumstances, being denominated tenders, with a view to avoid the prohibition contained in the Queen's instructions; and I would observe that the vessel *Sea Bride*, captured by the *Alabama* off Table Bay a few days since, or all other prizes, might be in like manner styled tenders, making the prohibition entirely null and void.

"I apprehend that to bring a captured vessel under the denomination of a vessel-of-war, she must be fitted for warlike purposes, and not merely have a few men and two small guns put on board her (in fact, nothing but a prize crew) in order to disguise her real character as a prize.

"Now this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and the number of her crew are quite insufficient for any service other than those of slight defence.

"Viewing all the circumstances of the case, they afford room for the supposition that the vessel is styled a 'tender' with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements could be made for the disposal of her valuable cargo, the transhipment of which, your Excellency will not fail to see, might be readily effected on any part of the coast beyond the limits of this Colony.

"My sole object in calling your Excellency's attention to the case is to avoid any breach of strict neutrality."

The Governor, acting on the opinion of his responsible legal adviser, resolved on admitting the *Tuscaloosa*.

In reporting this decision to the Secretary of State for the Colonies, he asked to be instructed on another question, which appeared likely to arise, if indeed it had not already arisen :—

"Before closing this despatch I wish particularly to request instructions on a point touched on in the letter from the United States' Consul of the 17th instant, viz., the steps which should be taken here

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in the event of the cargo of any vessel captured by one of the belligerents being taken out of the prize at sea, and brought into one of our ports in a British or other neutral vessel.

"Both belligerents are strictly interdicted from bringing their prizes into British ports by Earl Russell's letter to the Lords of the Admiralty of the 1st June, 1861, and I conceive that a Colonial Government would be justified in enforcing compliance with that order by any means at its command, and by the exercise of force if it should be required.

"But that letter refers only to 'prizes,' that is, I conceive, to the ships themselves, and makes no mention of the cargoes they may contain. Practically the prohibition has been taken to extend to the cargoes; and I gathered from a conversation with Captain Semmes on the subject of our neutrality regulations, that he considered himself debarred from disposing of them, and was thus driven to the destruction of all that he took. But I confess that I am unable to discover by what legal means I could prevent the introduction into our ports of captured property purchased at sea, and tendered for entry at the Custom-house in the usual form from a neutral ship. I have consulted the Acting Attorney-General on the subject, and he is not prepared to state that the Customs authorities would be justified in making a seizure under such circumstances; and therefore, as there is great probability of clandestine attempts being made to introduce cargoes of this description, I shall be glad to be favoured with the earliest practicable intimation of the views of Her Majesty's Government on the subject."

Sir Philip Wodehouse's decision was not approved by the Home Government. The Duke of Newcastle was advised that the *Tuscaloosa* "did not lose the character of a prize captured by the *Alabama*, merely because she was, at the time of her being brought within British waters, armed with two small rifled guns, and manned with a crew of ten men from the *Alabama*, and used as a tender to that vessel under the authority of Captain Semmes." As to the cargoes of captured vessels, the Governor was instructed that the Queen's Orders "apply as much to prize cargoes of any kind, which may be brought by any armed ships of either belligerent into British waters, as to the captured vessels themselves, They do not, however, apply to articles which may have formed part of any such cargoes, if brought within British

jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors."

The departure of the *Tuscaloosa*, early in August, for a cruise on the coast of Brazil, had relieved the Governor from further trouble on her account. But with her return, five months afterwards, the question revived. She was then seized by Rear-Admiral Walker, with the concurrence of the Governor, who believed—and was perhaps warranted in believing—that his instructions left him no choice. She had at that time on board six small guns, four officers (all commissioned in writing to the ship by Captain Semmes), and twenty men, and continued to style herself "tender to the Alabama." The lieutenant commanding her protested warmly against this treatment. His vessel had been received, he said, when she was previously in Simon's Bay, as a commissioned ship-of-war; and when she left, as was well known, for a cruise on active service, no intimation had been conveyed to him that she would on her return be regarded as a "prize" and liable to seizure. Nothing had occurred in the meantime to deprive her of the character in which she had been originally recognized; and having received no notice or warning of any kind, he had a right to expect to be permitted to enter without molestation. This remonstrance had so much reason in it that Governor Wodehouse was directed, "on the special circumstances of the case, to restore the vessel." The order, however, came too late. The *Tuscaloosa*'s officers had left the Colony, and she remained in the hands of the local authorities until the end of the war, when she passed into the possession of the Government of the United States.

This train of circumstances appears to have given occasion to the Circular Instructions of 2nd June, 1864,[1] which provided, more or less effectually, for the various

[1] See above, p. 140.

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questions which had arisen. These instructions excepted from the operation of the Order excluding prizes, any vessel "which shall have been actually and *bonâ fide* converted into and used as a public vessel-of-war." In all doubtful cases of this kind the substantial question is, whether the vessel is armed for war and is commissioned as a public ship by a competent public authority. If she be not commissioned as well as armed, her previous character remains unchanged, and she has no claim to any of the immunities of a public ship; if she be, satisfaction for any irregularities committed in fitting her out, or of which she may have been made the instrument, ought to be sought from the Government which has become responsible for her, by incorporating her into its navy. It is not, I conceive, to be assumed that, by virtue of any universal custom, captains of men-of-war may commission vessels as "tenders," and thus invest them with the character of public ships: such an authority, where it exists, is a delegated authority derived from the Sovereign, and granted either expressly or by the established rules of a particular naval service; and there are good reasons why it should not be general and unlimited.[1] The Confederate officers appear to have used this power, or assumed power, very freely. The *Florida*, in the course of a few weeks, converted two of her prizes into "tenders," each of which did considerable mischief.[2] That

[1] See the observations of Sir C. Robinson in *he Donna Barbara* (Haggard's Admiralty Reports, iii, 366). Authority for the employment of tenders, it was there laid down, is given by the Admiralty, by means of official letters sanctioning the purchase or use of such vessels, and it is granted only for a limited number, with reference to the service on which the ship is employed, the number of her crew, and other considerations of a public nature, on which the fitness and expediency of such a measure must depend.

"It should be left to the State," said Lord Stowell, in reference to the same subject, "to judge of the extent and the mode of hostility that is to be exercised."—*The Melomanie*, Rob. v, 40.

[2] See the account of her cruise in Moore's *Rebellion Record*, vol. vii, p. 458 (Documents).

the *Tuscaloosa* was *bonâ fide* used as a vessel-of-war, there is no doubt. But a grave irregularity, at the least, was committed in sending her into a neutral port with cargo—a cargo which she was afterwards employed in transporting to the place where it was to be handed over to the purchaser. This irregularity alone was amply sufficient to justify the misgivings of Sir Baldwin Walker.

The *Alabama* returned in March 1864 from her cruise in the China seas, touched again at the Cape, and in five days sailed for Europe, much the worse for hard and incessant service. She directed her course to Cherbourg, but had not been three days at her moorings when the United States' war-steamer *Kearsarge*, a vessel of about the same class, arrived from Flushing, and lay off the mouth of the harbour. Captain Semmes sent word to his antagonist—an officer with whom in other times he had sailed as a member of the same service—that he would come out and fight his ship as soon as he had had time to coal. On Sunday morning, the 19th June, six or seven miles from shore, the two vessels engaged one another, and the *Kearsarge* succeeded in sinking her enemy, after an action of a little more than an hour. Here, in the waters of the Channel, closed the first and only cruise of the *Alabama*. But a new discussion, conducted with some warmth by the American Government, sprang up even out of the circumstances of her end, and it is therefore necessary to state those circumstances.

At the time when the *Alabama* hauled down her flag, she was in a sinking state; and she went down about twenty minutes afterwards. All the wounded, and such of the boys as were known to be unable to swim, were sent to the *Kearsarge* in the boats not destroyed in the action. Those who remained in the ship threw themselves into the water as she settled down by the stern, and swam for their lives. Of these some were picked up by boats lowered by the *Kearsarge*, others

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by two French pilot-boats which were near,[1] others again by an English yacht, the *Deerhound*, the owner of which, with his wife and children, had come out of Cherbourg to see a sight they were not likely to see again. Among the last to leave the ship were the Captain and First Lieutenant, and these, with other officers and men, succeeded in reaching the *Deerhound*. Ten were drowned—among them the Assistant Surgeon, who had refused to go with the wounded in the boats, and was the only Englishman whom the *Alabama* numbered among her officers. This is Captain Semmes's account, and there is no reason for imputing untruth to him. The *Deerhound*, which was at a considerable distance when the *Alabama* struck, steamed up when the latter was seen to be sinking. What followed is thus related by the owner of the yacht in a letter which he afterwards addressed to Earl Russell :—

"At half-past 12 o'clock we observed the *Alabama* to be disabled, and in a sinking state; and as I saw that no boats were being lowered from the *Kearsarge* to save the crew of the sinking ship, it occurred to me that the *Kearsarge* also must be disabled, and that her crew must be unable to help the people of the *Alabama*. Under this impression I felt it my duty to make towards the *Kearsarge* in order to offer assistance; and, when within hail of that vessel, I called out and asked whether I could afford them any help, and the answer was, 'No, but for God's sake do what you can to save them!' We immediately pushed towards the *Alabama*, and when within a distance of 200 yards, she sank. This occurred at 12·50. We then lowered our two boats, and with the assistance of the *Alabama's* whale-boat and dingy, succeeded in saving about forty men, including Captain Semmes and thirteen officers. At 1 P.M. we steered for Southampton.

"I acknowledge, my Lord, that in leaving the scene of action so quickly I was animated with a wish to save from captivity Captain

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[1] Mr. Dayton writes: "Many boats went off towards its close" (the close of the action), "and helped to pick up the swimming and drowning men. Some were brought by our own boats to the *Kearsarge*, some were carried on shore, and some got off in an English vessel and were landed, I am informed by telegram, at Southampton." —*To Mr. Seward*, 20th June, 1864.

Semmes and the others whom we had rescued from drowning; but I should have done the same for the people of the *Kearsarge* if they had been placed in similar jeopardy. I am charged with having aided in the escape of men who 'had surrendered themselves prisoners of war,' but I did not know at the time that they had so surrendered. Whether, under the circumstances, they could be justly considered 'prisoners of war,' is a question which I will not presume now to discuss, inasmuch as it is not necessary for my justification. At the time when I rescued Captain Semmes and others from the water I had the warrant for so doing in the request from the Captain of the *Kearsarge* that I would render them assistance. That request was not accompanied with any condition or stipulation; and therefore, having got as many of the drowning men on board as I could reach, I was not conscious of being under any obligation to consult the Captain of the *Kearsarge* as to their disposal, and I took them as soon as possible to Southampton in compliance with their own earnest entreaties."[1]

The report of the captain of the *Kearsarge* contains nothing inconsistent with these narratives. He mentions, however, that one of the *Alabama*'s officers had come alongside of the *Kearsarge*, and had asked that her boats might be lowered; and that "as it was apparent the *Alabama* was settling, this officer was permitted to leave in his boat to afford assistance"—a circumstance not stated by Captain Semmes.

The American Government complained bitterly of the conduct of the yachtsman. He ought, it was insisted, to have handed over the persons whom he had picked up to the captain of the *Kearsarge;* and he was accused, without foundation, of having had a previous understanding with Semmes. A neutral has, indeed, no right to approach during an action for the purpose of giving assistance to either combatant, or of rescuing either from the pursuit of a victorious enemy; if he attempts such interference, he makes himself a party in the conflict, and may be treated as such. But in this case there was no such inter-

[1] *Mr. Lancaster to Earl Russell*, 16th July, 1864.

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ference. The yachtsman was a stranger, whom chance and curiosity had drawn to the spot; he appears to have been actuated by common humanity in trying to save drowning men; and he was not only permitted but entreated to do so by the captain of the *Kearsarge*. A naval officer should understand that he is not entitled, under such circumstances, to call upon the neutral to surrender the persons whom he has been instrumental in saving. The neutral owes no such obligation. He has, indeed, no right to transfer them forcibly from the deck of his own ship to that of the victor, nor has the latter the right to seize and capture them on the deck of the neutral. Whether the *Alabama*'s boats, after she struck, ought to have been employed in putting men on board the *Deerhound*, and whether an officer who had once been alongside of the *Kearsarge*, and had been suffered to return, was not bound in honour to consider himself as a prisoner on parole, though he might not have been formally paroled, are questions which do not affect the owner of the *Deerhound*.

The cruise of the *Florida* began when she issued from Mobile in January, 1863. For some time she cruised in the Atlantic, making many prizes, and once approaching within fifty or sixty miles of New York. In July she touched at Bermuda, where she was unable to obtain the supply of coal she desired, but made her way across the ocean, and in August put into the harbour of Brest, landed the crew of a Federal merchantman which she had burnt off the Irish coast, and went into dock for repairs. The subjoined extracts from Mr. Dayton's correspondence show the nature of the remonstrances to which this gave rise, and the answers elicited from the French Government.[1] The *Florida* remained in Brest

[1] "I have this day sent out a note to the Minister, informing him that I had learned that the *Florida* had come into Brest, not for repairs of machinery only, but for coal, which had been denied to her at

harbour till the end of January or the beginning of February, 1864. During much of this time (from 28th October, 1863, to 15th February, 1864) the *Georgia*

Bermuda, from which port she had come. The fact is, that as she is a good sailing vessel, and has crossed the Atlantic, as I believe, principally by that means, neither coal nor machinery is necessary to her safety, although a great convenience, doubtless, in enabling her to prey upon our commerce. It may well be doubted whether the rule which limits aid in such cases, to what is called for by necessity and humanity, applies at all to her case."—*Mr. Dayton to Mr. Seward*, 25th August, 1863.

"I have to-day had a conversation with M. Drouyn de l'Huys upon the subject. He says they are much annoyed that the *Florida* should have come into a French port. But having recognized the South as belligerents, they can only deal with the vessel as they would deal with one of our ships-of-war under like circumstances. They will give her so much aid as may be essential to her navigation, though they will not provide her with anything for war. I stated that she was a good sailer, and really needed nothing in the shape of repairs to machinery, &c., to enable her to navigate. He said that if she were deprived of her machinery, she was *pro tanto* disabled, crippled, and liable, like a duck with its wings cut, to be at once caught by our steamers. He said it would be no fair answer to say the duck had legs, and could walk or swim. But he said that, in addition to this, the officers of the port had reported to the Government that the vessel was leaking badly; that she made water at so much per hour (given the measurement), and unless repaired she would sink; that this fact, coming from their own officers, he must receive as true. They said nothing, however, about her copper being damaged, but reported that she needed calking and tarring, if I understood the French word rightly. I then asked him if he understood that the rule in such cases required or justified the grant of a Government dock or basin for such repairs, especially to a vessel like this, fresh from her destructive work in the Channel; remarking that, as she waited no judicial condemnation of her prizes, when repaired in this Government dock, she would be just at hand to burn other American ships entering or leaving Havre and other French ports. He said where there was no mere commercial dock, as at Brest, it was customary to grant the use of any accommodations there to all vessels in distress, upon the payment of certain known and fixed rates; that they must deal with this vessel as they would with one of own ships, or the ships of any other nation, and that to all such these accommodations would be granted at once."—*The same to the same*, 3rd September, 1863.

"On the 19th instant I received a note from M. Drouyn de l'Huys requesting to see me on the next day (yesterday) in reference to certain

Chap. XV. —which had, as we have seen, armed herself, by the instrumentality of an English steamer, in French waters, and had since been cruising in the South African seas—

matters of business. I, of course, attended at the Foreign Office at the time named. He then informed me that it had been reported to him that the United States' steam-ship *Kearsarge*, Captain Winslow, now in the port of Brest, kept her steam constantly up with the view, as supposed, of instantly following and catching, if possible, the *Florida* upon her leaving that port; and that France, having resolved to treat this vessel as a regularly commissioned ship-of-war, could not and would not permit this to be done. He said that the rule which requires that the vessel first leaving shall have twenty-four hours the start must be applied. To avoid the difficulty which he said must inevitably follow a disregard of this rule by Captain Winslow, he requested me to communicate to him the determination of this Government, and apprise him of the necessity of complying with the rule. Inasmuch as nothing was to be gained by inviting the application of force, and increased difficulties might follow that course, I have communicated to Captain Winslow the letter of which I herewith send you a copy.

"M. Drouyn de l'Huys furthermore informed me that this Government, after much conference (and, I think, some hesitation), had concluded not to issue an order prohibiting an accession to the crew of the *Florida* while in port, inasmuch as such accession was necessary to her navigation. They had made inquiries, it would seem, and said they had ascertained that the seventy or seventy-five men discharged after she came into Brest were discharged because the period for which they had shipped had expired. He said, furthermore, that it was reported to him that the *Kearsarge* had likewise applied for some sailors and a pilot in that port, as well as for coal and leave to make repairs, all of which had been, and would be, if more were needed, cheerfully granted.

"I told him I was quite confident the *Kearsarge* had made no attempt to ship a crew there, and that as respects a pilot, that stood on ground peculiar to itself, and had no reference to the general principle.

"The determination which has been reached by the French authorities to allow the shipment of a crew, or so large a portion of one, on board of the *Florida* while lying in their port, is, I think, wrong, even supposing that vessel a regularly commissioned ship-of-war. I told M. Drouyn de l'Huys that, looking at it as a mere lawyer, and clear of prejudices which my official position might create, I thought this determination an error. He said, however, that in the conference they had reached that conclusion unanimously, although a majority of the Ministry considering the question were lawyers."—*The same to the same*, 21st October, 1863.

was in the neighbouring port of Cherbourg. Both the Confederate vessels left the shelter of French waters about the same time, the *Kearsarge* (which had been watching them) being absent from her station. The *Georgia*, in May 1864, found her way into Liverpool, where she was dismantled and sold. The *Florida* ended her career in October 1864, at Bahia, where she was attacked, whilst lying under the guns of a Brazilian battery and under the broadside of the guard-ship, by the United States' steamer *Wachusetts*. The attack was made before daybreak, most of the *Florida*'s crew being ashore on leave; the vessel was easily overpowered, towed out to sea by the *Wachusetts*, and brought into Hampton Roads. Here she went to the bottom, under circumstances which are thus stated by Mr. Seward in an official communication to the Brazilian Chargé d'Affaires :—

"While awaiting the representations of the Brazilian Government, on the 28th November, she sank, owing to a leak which could not be seasonably stopped. The leak was at first represented to have been caused, or at least increased, by collision with a war transport. Orders were immediately given to ascertain the manner and circumstances of the occurrence. It seemed to affect the army and navy. A naval court of inquiry and also a military court of inquiry were charged with the investigation. The naval court has submitted its report, and a copy thereof is herewith communicated. The military court is yet engaged. So soon as its labours shall have ended, the result will be made known to your Government. In the meantime it is assumed that the loss of the *Florida* was in consequence of some unforeseen accident, which casts no responsibility on the Government of the United States."

The restitution of the ship having thus become impossible, the President expressed his regret that the sovereignty of Brazil had been violated, dismissed the Consul at Bahia, who had advised the offence, and sent the commander of the *Wachusetts* before a court-martial.

The *Shenandoah*, which hoisted her flag at Porto Santo in October 1864 under the circumstances already

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described, put in at Melbourne in January 1865, and obtained permission to remain a few days for necessary repairs. The permission to repair was soon afterwards suspended, when information reached the Governor that she had men on board who had joined her at the port. Her commander denied this, but had subsequently to admit it, declaring at the same time that they were there without his knowledge, and in concealment, and had been turned out as soon as discovered. The four sailors referred to had in fact come ashore, and three of them were committed for trial. The *Shenandoah* contrived, however, when she sailed in February, to carry away a considerable number of men who had come on board during the previous night in the character of "stowaways"—that is, as persons who secrete themselves in the hold of a ship before she leaves port—and of whose presence Captain Waddell probably remained in convenient ignorance till they were fairly at sea, when they were all put upon the ship's books.[1] She proceeded to the Arctic Ocean, where she continued to be employed in capturing and destroying American whalers until her commander learnt, late in the summer, that the Confederate Government had ceased to exist, and that the war was at an end. He then returned unmolested to Liverpool, where he arrived on the 6th November.[2]

[1] See Affidavit of W. A. Temple, sent by Mr. Adams to the Earl of Clarendon, 28th December, 1865.

[2] Captain Waddell (who appears to have been an officer of great self-possession) notified his arrival to the Government in the following letter to the Secretary of State for Foreign Affairs:—

"My Lord, "'*Shenandoah*,' *November* 6, 1865.

"I have the honour to announce to your Lordship my arrival in the waters of the Mersey with this vessel, lately a ship-of-war under my command, belonging to the Confederate States of America.

"The singular position in which I find myself placed, and the absence of all precedents on the subject, will, I trust, induce your Lordship to pardon a hasty reference to a few facts connected with the cruise lately made by this ship.

"I commissioned the ship in October 1864, under orders from the

The vessel was taken in charge by the commanding officer of Her Majesty's ship *Donegal*, and, on the request of the American Government, was handed over to the American Consul.

The *Shenandoah* and her proceedings became the subject of an animated correspondence between the two Governments, which was prolonged even after her surrender. The American Government continued to insist that she had never ceased to be an English ship, that the hostilities which had been committed on board of her were therefore acts of piracy, that she ought not to have been admitted into the harbour of Melbourne, and that Captain Waddell and his crew ought to have been prosecuted as pirates. The Government of Great Britain continued to maintain that these views were "opposed either to universally acknowledged principles

Naval Department of the Confederate States; and, in pursuance of the same, commenced actively cruising against the enemy's commerce. My orders directed me to visit certain seas in preference to others; in obedience thereto I found myself in May, June, and July of this year in the Okhotsk Sea and Arctic Ocean. Both places, if not quite isolated, are still so far removed from the ordinary channels of commerce that months would elapse before any news could reach there as to the progress or termination of the American war. In consequence of this awkward circumstance I was engaged in the Arctic Ocean in acts of war as late as the 28th day of June, in ignorance of the serious reverses sustained by our arms in the field, and the obliteration of the Government under whose authority I had been acting.

"This intelligence I received for the first time on communicating at sea, on the 2nd of August, with the British barque *Barracouta*, of Liverpool, fourteen days from San Francisco. Your Lordship can imagine my surprise at the receipt of such intelligence, and I would have given to it little consideration if an Englishman's opinion did not confirm the war news, though from an enemy's port. I desisted instantly from further acts of war, and determined to suspend further action until I had communicated with an European port, where I would learn if that intelligence were true. It would not have been intelligent in me to convey this vessel to an American port for surrender simply because the master of the *Barracouta* had said the war 'was ended.' I was in an embarrassing position; I diligently examined all the law writers at my command, searching a precedent

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of law, or to notorious and indisputable facts: to universally acknowledged principles of law, if Mr. Seward means to contend that the commander and crew of a vessel, commissioned as a public ship-of-war by a revolutionary Government which has been recognized as a belligerent Power by neutral nations, can be charged in a neutral country with piracy, merely for capturing and destroying the ships of the other belligerent; to notorious and indisputable facts, if he means to deny that the *Sea King* was transferred and delivered by her former British owners and commander to agents of the Confederate States, by whom she was purchased in order that she might be employed and commissioned by and in the service of those States, or that she was actually so employed and commissioned as a public ship-of-war under the name of the *Shenandoah* from a period ante-

for my guidance in the future control, management, and final disposal of the vessel. I could find none. History is, I believe, without a parallel.

"Finding the authority questionable under which I considered this vessel a ship-of-war, I immediately discontinued cruising, and shaped my course for the Atlantic Ocean.

"As to the ship's disposal, I do not consider that I have any right to destroy her, or any further right to command her. On the contrary, I think that as all the property of Government has reverted, by the fortune of war, to the Government of the United States of North America, that therefore this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted. I therefore sought this port as a suitable one wherein to 'learn the news,' and, if I am without a Government, to surrender the ship with her battery, small arms, machinery, stores, tackle, and apparel complete to Her Majesty's Government for such disposition as in its wisdom should be deemed proper.

"I have, &c.

(Signed) "JAMES J. WADDELL."

The truth of Captain Waddell's assertion, that his first information of the overthrow of the Confederacy was gained from the *Barracouta*, was disputed; and there was some evidence that he continued to make captures after report of it had reached him from one of the whaling vessels which he destroyed.

cedent to the first capture made by her down to the close of the war. It cannot be too distinctly understood," added the Earl of Clarendon, "that no charge of piracy could possibly be preferred or entertained against this vessel under these circumstances by Her Majesty's Government or in the Courts in this country, unless it had been satisfactorily shown that this ship wilfully continued to seize and destroy United States' vessels after she was apprised of the termination of the war." And it was observed that "Mr. Adams's request for the delivery of the ship to the United States' Government could neither have been made nor complied with, except upon the ground that she was, in the circumstances which had happened, the lawful property of that Government. If she had been British-owned, as Mr. Seward now desires to represent, the Government of the United States could have had no possible claim or title to her, even though she might have been guilty of piracy, nor could the Crown of Great Britain have acquired any title to or disposing power over her, by means of any surrender of Captain Waddell in the port of Liverpool, or by any other means short of a regular forfeiture and condemnation by process of law."

It must be reckoned a remarkable circumstance that no Confederate cruiser which extended its operations beyond the immediate neighbourhood of the American shores ever fell in with a Federal man-of-war on the high seas.

To any Englishman, I should think, it must be an irksome and unpleasant task to tell the story which has been told in this and the two preceding chapters. The various contrivances by which these vessels were procured and sent to sea were discreditable to the Confederate Government, and offensive and injurious to Great Britain. Such enterprises were, and were known to be, calculated to embroil this country with the United States; they were carried

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into effect by artifices which must be accounted unworthy of any body of persons calling themselves a Government—of any community making pretensions to the rank of an independent people. Every transaction was veiled in secresy, and masked under a fictitious purchase or a false destination. By such devices it was intended, no doubt, to escape the notice of a vigilant and powerful enemy; but it was also intended to blind the eyes of the Government of Great Britain. Nor will any one attempt to dispute that the success of these projects was extremely annoying and irritating to the American Government and people. It is true, as they have constantly repeated, that the ships were procured in England; it is true that they were armed from England; it is true that of the crews which manned them, a large proportion were British subjects. It is true also that they severely harassed American shipping, and inflicted heavy losses on American trade. All this is true. What is not true, I think, is that for these losses the British nation is justly responsible.

CHAPTER XVI.

Questions which arose within the United States as to the Treatment of Foreigners resident there.—Arbitrary Arrests.—Claim to Exemption from Compulsory Military Service.—Principles on which these Questions were dealt with by the British Government.—Observations.

Civil war is stern and exacting. It demands extraordinary sacrifices, imposes galling and unusual restraints, justifies or excuses exertions of power which in ordinary times would be oppressive and tyrannical. The pressure of this great calamity, always more or less unequal, has some peculiar aggravations in a country containing a large population of foreign birth, whose plans of life are yet unsettled, or whose attachment to their new country is but half-formed, and to whom it is still something less than a home. Many of these may be expected to bear with impatience hardships for which they were little prepared, for the sake of a cause which they scarcely feel to be their own; and troublesome and difficult questions are likely to arise in respect of persons whose original nationality is regarded by the law, or by themselves, as not yet exchanged, or not completely exchanged, for a new one. During certain periods of the war such questions sprang up in abundance; but, being handled very prudently, in a spirit of forbearance and moderation, they never grew really importunate or formidable. These questions fell mainly into two classes; they related either to arbitrary severities alleged to have been inflicted on British subjects, or to the liability of British subjects to military service. And in connection with each class of

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cases it sometimes became necessary to consider who were, or ought to be regarded as being, British subjects.

The general principles which should govern questions of this kind are not difficult to state, nor are they very difficult of application. A foreigner must take the law as he finds it; and he must submit, whilst he remains in a country not his own, to any exceptional legislation which temporary circumstances may require. It is not for him, nor for any foreign Sovereign, to judge whether these laws are necessary or just; he must obey them, be they never so unjust or unnecessary; all that he can fairly insist on is that, when any material change is made in the legal condition of the class to which he belongs, he should be allowed a reasonable time to withdraw. From any illegal exercise of force, on the part of the Executive Government or its officers, he has a right to be free, in common with all other persons who, like him, are under the control and protection of the laws; and, if this right be violated, the Sovereign to whom his allegiance is due may interpose, by remonstrance or otherwise, on his behalf. But the interposition of a foreign Sovereign for such a purpose in times of civil commotion should be sparing and cautious; for he is seldom able to judge whether that necessity which is always pleaded in excuse for an unlawful stretch of power really exists or no; and, where citizen and alien are treated alike, this, in any country accustomed to the reign of law and order, is a real though imperfect guarantee that the alien has not suffered, and will not suffer, any great and substantial injustice. It is commonly better, therefore, to leave the foreigner to take his chance with the citizen.

During the earlier stages of the conflict, the Federal Executive assumed the power to suspend at pleasure the ordinary legal securities for personal liberty in the States which adhered to the Union. Persons suspected of disaffection, against whom no overt act of treason could be proved, were arrested by soldiers, without any legal

warrant, on the order of the Secretary of State or of the General commanding the district, thrown into military prisons, and kept in confinement without being brought to trial till it was thought safe to release them. Writs of *habeas corpus* were issued by the Courts, but the military authorities were ordered to disobey them; in one instance, an attorney who had served the writ was imprisoned, and the judge who had issued it found a sentinel posted at his door. A sharp controversy arose respecting the legality of these proceedings. The Chief Justice of the Supreme Court, who had ordered an attachment to issue against the military commandant of Fort M'Henry for disobedience to such a writ, composed an elaborate paper in condemnation of them, which was met by the Attorney-General with a not less elaborate defence. It was affirmed that power to suspend in case of emergency "the privilege of the writ of *habeas corpus*" was entrusted by the Constitution to the President; that he was sole judge of the question whether there was an emergency; and that, in the event of invasion from abroad or rebellion at home, he might declare, or exercise, or authorize, martial law at his discretion. In England—where it is a settled constitutional principle that these tremendous powers are reserved to the supreme legislature, and that the assumption of them by the Crown, without legislative authority, would, under any circumstances, require an Act of Indemnity—these doctrines were received with some surprise, which did not disappear when they were compared with the text of the Constitution.

Among the persons arrested there were some — I believe, very few—who proved to be British subjects. They protested that they were innocent, and appealed for redress to the British Legation; and Lord Lyons was directed to make representations on their behalf. But the British Government wisely forbore to press its remonstrances, on finding that constitutional authority was

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claimed, rightly or wrongly, for acts which were alleged at the same time to be necessary for the public safety.

Where the power of imprisoning on suspicion is exerted freely, and is entrusted to soldiers, there will always be individual instances of harshness and injustice. But there is no reason to believe that it was exercised on the whole with excessive severity by President Lincoln's Government. It was enforced chiefly in the Border States, and especially in Maryland, a State in which disaffection abounded, and which was close both to the seat of Government and to the theatre of war;[1] and the proceedings in Congress during 1861 and 1862 show that it had the support of public opinion. In February 1862 the President issued a general order directing "that all political prisoners or state prisoners now held in military custody be released, on their subscribing to a parole engaging them to render no aid or comfort to the enemies in hostility to the United States. The Secretary will, however, at his discretion, except from the effect of this order any persons detained as spies in the service of the insurgents, or others whose release at the present moment may be deemed incompatible with the public safety." "Although," wrote Lord Lyons, in the following April, "the power to make political arrests has not been formally renounced by the Executive Government, it has not, so far as I

[1] The members of the Maryland Legislature were arrested by wholesale, in order to prevent them from passing a Secession Ordinance. (Macpherson's *Political History of the Rebellion*, p. 153.) On this occasion the Secretary of War sent the following directions to General Banks:—

"General, "*War Department, September* 11, 1861.

"The passage of any Act of Secession by the Legislature of Maryland must be prevented. If necessary, all or any part of the members must be arrested. Exercise your own judgment as to the time and manner, but do the work effectually.

"Very, &c.

(Signed) "Simon Cameron, Secretary of War."

know, been recently exercised. I am not aware of any British subject being now arbitrarily detained as a political prisoner. Arrests without form of law are still made by the military authorities in places occupied by the forces of the United States, but they appear to be confined in general to persons accused of offences affecting, more or less, the discipline or the safety of the army." But the difficulty experienced in enforcing drafts for the militia, with various other circumstances, led to repeated orders suspending the privilege of the writ at different times and in different parts of the Union; and an Act of Congress, passed in March 1863, set the question of constitutional law at rest by expressly investing the President with the disputed power, and providing that orders previously made by him or under his authority should be a defence to any proceedings, civil or criminal, on account of acts done under them.

The claim made by British subjects, throughout the States, to be exempt from compulsory military service gave far more trouble to the British Legation.

It is a reasonable principle that a resident foreigner, who, though not a citizen, is admitted to the enjoyment of ordinary civil rights, should be held bound to discharge the duties which ought to accompany them; should give his aid, if called upon, in the administration of justice, and contribute to the maintenance of order, and to the defence against foreign invaders of the country to which he is indebted for shelter and protection. That he should not be forced to serve personally in the regular army is, on the other hand, reasonable; because this might prevent him from quitting the country at pleasure, and might compel him not only to risk his life for objects in which, as a simple resident, he has really no concern, but to incur the penalties of treason by bearing arms against the State to which his allegiance is due. The second of these two reasons does not apply to compulsory service in a mere civil war. But

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civil war is, as its name imports, a war among citizens, for political objects; and persons who have the rights of residents, but have not the rights or the attachments of citizens, may reasonably excuse themselves from taking part in it. The protection which the Union afforded to a mere resident, bound to the country by no permanent ties, was not enough to warrant a demand that he should be ready to shed his blood for the re-conquest of the South. The Federal Government evinced no disposition to dispute this proposition, as a general rule. And had the American law of nationality represented with exactness—a thing perhaps impracticable—the true theory of nationality; had it defined with precision the rights of citizenship, and conferred those rights on all persons permanently settled in the country, and on them alone; the only question which could have arisen was the question of fact, whether any given person, for whom exemption was claimed, was or was not in fact permanently settled in the United States. American law, however, like the law of England and of most other countries, requires for the naturalization of a foreigner something more than the acquisition of an American domicil; it requires also that he shall have formally adopted American nationality, and have been admitted by public authority to the enjoyment of it; and it further exacts, with a view to make sure that the act is *bonâ fide* and deliberate, that he shall have resided five years at least within the United States, and that his intention to become an American citizen shall have been solemnly and publicly declared no less than three years in advance. At the same time a man may in some parts of the Union (chiefly the newly-settled States, which desire to attract emigrants) acquire the right to vote for members of Congress, without being himself an American citizen, after a short term of residence.[1]

[1] The Constitution provides that, as respects elections to the House of Representatives, "the electors in each State shall have the qualifi-

Thus whilst, on the one hand, the line of demarcation between citizens and aliens is less sharply traced in America than in most other countries, since political as well as civil rights may be exercised by an alien, there are always in America a great number of persons who have publicly chosen it as their country, but whose title to citizenship has not yet ripened by lapse of time. The reason why these peculiarities of American law have been noticed in this place will be presently seen.

No sooner had the war begun than the British Consulates became crowded with persons anxious to register themselves as British subjects, in the hope of obtaining exemption from service. Many of these were Irish emigrants. Many had already made a public declaration of their intention to become American citizens, and were only waiting till lapse of time should have perfected their title. In answer to a request for instructions on this head, made before the outbreak of the war, Lord Lyons had been told that "there is no principle of International Law which prohibits the Government of any country from requiring aliens resident within its territories to serve in the militia or police of the country, or to contribute to the support of such establishments." If, however, the militia were to be embodied for active service, and substitutes were not permitted, "the position of British subjects would appear to deserve very favourable consideration, and to call for every exertion being made in their favour on the part of Her Majesty's Government." In July 1861, Lord Lyons again asked for instructions, and was informed that—although the Queen's Government might well be content to leave British subjects, voluntarily

cations requisite for electors of the most numerous branch of the State Legislature." This political franchise, therefore, is more or less extended according to the laws of the State in which the voter resides.

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domiciled in a foreign country, liable to all the obligations ordinarily incident to such foreign domicil, including (when imposed by the municipal laws of such country) service in the militia or national guard or local police, for the maintenance of internal peace and order, or even, to a limited extent, for the defence of the territory against foreign invasion—it could not reasonably be expected to allow its subjects to be compelled to serve in a civil war, and thus to run the risk of being treated as traitors and rebels in a quarrel in which, as aliens, they had no concern.

Until the summer of 1862 no demand was made upon the services of the militia, beyond the 75,000 men called out at the commencement of the war. But in July 1862 an Act was passed providing for the enrolment of the militia, which was to include all able-bodied citizens between the ages of eighteen and forty-five; and on the 5th August the President ordered a draft of 300,000 men. On the 8th, orders were issued prohibiting persons liable to the draft from quitting the country; and these were enforced by numerous arrests. At the request of Mr. Stuart, then in charge of the British Legation, instructions were given that no restraint should be imposed on mere travellers not resident in the United States. Much inconvenience, however, was apprehended from the uncertainty which appeared to exist as to the exact *status* of resident aliens in different parts of the Union; and Mr. Percy Anderson, a member of the Legation, was desired by Mr. Stuart to proceed to the West and endeavour to make such arrangements with the Governors of the Western States as might secure reasonable protection to British subjects. He was everywhere received by the authorities with great frankness and cordiality, and succeeded in removing the chief difficulty which had arisen, by establishing an understanding that affidavits sworn before a notary public should be accepted as evidence of British nationality

where a Consular certificate could not be obtained. The following extracts from his Report will show the state of things with which he had to deal:—

"The necessity for immediate action has diminished, as there is now little prospect of a draft being enforced for the present; but from the state of feeling which I found to exist, it appears to me of great importance that the exemption should be claimed at a time when a draft is not imminent. It was for this reason that I urged upon the Governor of Illinois the appointment of officers to consider claims of exemption with as little delay as possible. When I visited Ohio and Indiana a draft was supposed to be imminent, and large numbers of British subjects were claiming exemption, which was causing considerable excitement and ill-feeling. As it became evident that the prospect of the draft was growing more distant, the excitement cooled down; and as the majority of the British subjects in those States have, probably, now obtained their exemption papers, and the machinery for doing so is in working order, it is not likely that this state of things will recur, except under exceptional circumstances, such as have recently occurred in Cincinnati. In Missouri the State Militia was suddenly called out, causing a rush for protection papers on the part of British subjects, principally Irishmen of the lower classes; and such was the public indignation that serious riots would have ensued, but for the exertions of Mr. Wilkins to preserve order, and the cordial support which he received from the military authorities. When, however, the claims for exemption are once admitted, the danger will be very much lessened, and a great cause of popular irritation removed.

"In Kentucky I found that somewhat different measures were required. The State was under martial law, and was the seat of war; the persons and property of British subjects were therefore exposed to constant danger, and it was evident that it was necessary for them to have in their possession evidence of their nationality, which could be produced at any moment on an emergency arising. The danger of being included in a draft was one of the least perils to which they were exposed. On consultation with the authorities and the principal British residents, I found that a machinery existed in the State which appeared to me admirably adapted to the purpose. The Judges presiding over the various County Courts were represented to me as being generally men of intelligence and ability, who could be relied upon for sifting impartially evidence brought before them as to nationality. On proof being given, certificates would be issued by the Courts in their character of Courts of Record, with the seal of the Courts affixed, stating that satisfactory evidence had been deposited in the Court that the person named in the certificate was a foreigner, never having forfeited his original allegiance. As these papers would be issued by Courts whose authority was equally recognized by the

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Federals and Confederates, there would appear to be reasonable probability of their being respected by both parties. I therefore, with the approval of the authorities, recommended British subjects in the State of Kentucky to procure certificates of this character, and I stayed long enough in the State to satisfy myself that the arrangement worked well.

* * * * *

"Memphis I found in a purely exceptional position. The town was under strict martial law, and the action of all the ordinary Law Courts was suspended. But little Union feeling existed in the city, and the Federal lines only extended in a radius of about 4 miles around it. From the depredations committed by the Federal soldiers, and by the roving bands of robbers and guerillas, there was but little security either of life or property; strict measures had been adopted to secure order and control trade, and British subjects were in a great state of agitation and alarm.

"General Sherman, the military commander, expressed great pleasure at my arrival, as he said that he was most anxious to respect the rights of neutrals, but that in his position, being as he said in the midst of enemies, it was absolutely necessary that he should be enabled clearly to understand who were the persons in his district who were entitled to immunities as *bonâ fide* subject of foreign Powers. He said that there were many persons who had always been looked on as citizens, though they might not have exercised the privileges, who for purposes of their own wished to be so considered; that such persons would conceal their nationality till it became absolutely necessary for them to declare it in order to obtain immunity from obligations. He said that he could not make himself responsible in such cases; that he might be obliged to take sudden, prompt, and energetic measures, and at such a time claims for exemption might be overlooked: but he added that, if I could arrange any plan by which he might be enabled to distinguish in quiet times between those who were and were not liable to obligations he might find it necessary to impose, he would promise me that he would pay the strictest respect to the rights of neutrals. Upon my asking him what proof he would require of alienship, he answered that he would be satisfied with a simple declaration; adding, 'My only wish is to secure that a man who now declares himself an alien shall be henceforth so considered; that he shall declare himself openly; if a citizen now claims immunities as an alien, he shall have them, but I will take care that he shall not resume the privileges of citizenship at his convenience.'

"His views on the subject seemed to me just, and I therefore prepared the inclosed notice in accordance with them. He said that the arrangement perfectly met his wishes on the subject. I requested that he would publish something in his own name which would suffice to show his successors in his command that the arrangement was not simply a suggestion emanating from me, but was made with his concur-

rence. To this he readily assented, and added the remarks which appear at the end of the notice. I found that British residents were pleased with the arrangement, and I arranged the details for carrying it out with the Provost-Marshal. It was clearly understood that all persons whose names appeared on the register would be considered entitled to the same rights with regard to passes and trade as loyal citizens, and to the immunities of aliens. Residents could have their names added to the register after the expiration of the limited period, on giving proof of their nationality, and explaining the reasons of their delay in coming forward. This latter precaution was necessary in consequence of there being ready access through the lines and to and from the Southern States.

"From what I have hitherto learned I have reason to believe that these arrangements are working well in the various States which I have visited; they are, I trust, calculated to relieve our Consuls from an amount of labour and responsibility which they could hardly support, and to lessen the danger of irritation arising towards foreigners in times of popular excitement.

"Certain points, however, still remain to be dealt with, arising from the difficulty of drawing the line clearly between the definition of citizens and aliens. I was somewhat surprised to find, as I wrote to you at the time, that the Governor of Ohio considered that foreigners who had merely 'declared their intention' to become citizens were as much liable to the obligations of citizenship as if they had completed the act of naturalization. I told him that Mr. Seward himself had admitted the contrary; he said that if Mr. Seward would distinctly say so, Governors must naturally submit to his view of the case, but that pending such a declaration on the part of Mr. Seward he must retain his own opinion. The letter from Mr. Seward to you which appeared shortly afterwards in the papers set that point at rest, and I had no further difficulty on the subject.[1] In fact, I found

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[1] "*Department of State, Washington,*
"Sir, "*August* 20, 1862.

"Having informally understood from you that British subjects who had merely declared their intention to become citizens of the United States had expressed apprehensions that they might be drafted into the Militia, under the late requisition of the War Department, I have the honour to acquaint you, for their information, that none but citizens are liable to Militia duty in this country, and that this Department has never regarded an alien, who may have merely declared his intention to become a citizen, as entitled to a passport, and consequently has always withheld from persons of that character any such certificate of citizenship.

"I have, &c.
(Signed) "W. H. SEWARD."

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it almost invariably admitted that the law was clearly on Mr. Seward's side.

"A second point is with regard to the children of naturalized British subjects. On this subject I found great diversity of opinion; it is a very important one, and one which, if no understanding is come to respecting it, may cause much trouble. Consul Wilkins, at St. Louis, has been overwhelmed with letters asking for the opinion of Her Majesty's Government on the subject.

"Such children may be divided into the following classes:—

"1. Those born in the country. Respecting these there is no difficulty.

"2. Those not in the country at the time of the naturalization of their parents. These, I understand, are not claimed by the United States' Government.

"3. Those in the country at the time of the naturalization of their parents. When under age, it is claimed that they follow the nationality of their parents, and this, it appears, is also the law of Great Britain.

"The difficulty arises when they attain their majority. The Naturalization Laws of the United States speak of this class in the following words, in the Act of April 14, 1802, section 4:—

"'And be it further enacted that the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of said States, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States.'

"The question is whether this clause is to be understood as being permissive or compulsory. An eminent lawyer in Missouri, with whom I had a conversation on the subject, gave it as his opinion that it was permissive, and that the children, on attaining their majority, had the right of election. But the usual interpretation is that the clause is compulsory; consequently, unless an authoritative decision can be given on the point, complications will probably arise when the question is no longer capable of being evaded.

"There is also a doubt on this point. If the child, on attaining his majority, has the right of election, by what means does he make that election known?

"A third point on which difficulties are constantly arising is as to how far the exercise of the elective franchise by British subjects is to be considered as barring their right to exemption from military service. In the majority of the States none but citizens have the right to vote; foreigners, therefore, who exercise this privilege do so fraudulently, and thereby clearly forfeit their immunities as aliens. But in some of the Western States a different state of things exists. In Indiana all

aliens are permitted to vote after one year's residence and declaring their intention to become naturalized. This is also the case in Wisconsin and, I believe, in Iowa. In Illinois, aliens who were resident in the State previously to the adoption of the Constitution of 1847 have the same privilege. In Kansas, aliens were specially invited to vote upon the Constitution. The reason for the extension of these privileges to foreigners in the above-mentioned States is the competition for immigration. The power to vote at once is held out as a bait to induce foreigners to settle. As the pressing want of immigrants disappears, the relaxation in the alien laws are withdrawn, as in the case of Illinois in 1847. It would seem, therefore, hardly just that these States should offer certain privileges to aliens for the benefit of the States themselves, and then should affix a penalty in a time of pressure to the exercise of those privileges. It must be remembered, too, that in no States are the aliens entitled to the full privileges of citizens. Though permitted to vote, they are excluded from holding any office.

"I thought it safest, in my conversations with the Governors, to take the ground that if an alien had exercised any of the exclusive privileges of a citizen, he had rendered himself liable to the obligations of citizenship; if he had exercised only those privileges which an alien is entitled to exercise, he was still entitled to the immunities of alienship. This appeared to me to be the only clear line that could be drawn, and would exclude voters in all States in which aliens have not the franchise.

"I found some difference of opinion on the point. The Governor of Indiana was anxious to claim all voters; but, on the other hand, the Lieutenant-Governor of Illinois stated that the view I have above given was unquestionably correct, and that he should so instruct all his officers. I have stated above that this gentleman expressed a belief that the instructions he was about to issue would be generally adopted throughout the Western States, and I hope, therefore, that this line will be generally drawn.

"In conclusion, I should wish to observe that I met everywhere with the most cordial reception, both on the part of the civil and military Governors; that they expressed great pleasure at the prospect which my visit appeared to give of a definite arrangement being come to on a question which was the source of much annoyance, and gave me every facility for procuring information and perfecting such arrangements as I was enabled to make."[1]

The case of persons who had voted at elections as citizens of a State, not being citizens of the United States, was afterwards made the subject of communications exchanged between the Ministers of Great Britain

[1] *Mr. Anderson to Mr. Stuart*, 28th September, 1862.

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and France and the American Government, but does not appear to have been definitely determined. Lord Lyons was finally instructed to advise all persons who, after having voted or exercised any privilege of citizenship, claimed exemption from service, to submit their claim to the judgment of a court of law.

As to the question which had arisen respecting the effect of a declaration of intention not followed by an actual admission to citizenship, the opinion of the Secretary of State had, as we have seen, been clearly expressed. But, as the demands of the war increased, and the pressure of the conscription on American citizens grew more severe, this class also was drawn within the net. An Act of 3rd March, 1863, passed to provide for a further enrolment of the militia, contained the following clause:—

> "Be it enacted that all able-bodied male citizens of the United States and persons of foreign birth, who shall have declared on oath their intention to become citizens under and in pursuance of the laws thereof, between the ages of twenty and forty-five years, except as hereinafter excepted, are hereby declared to constitute the national forces, and shall be liable to perform military duty in the service of the United States, when called out by the President for that purpose."

Although the powers conferred by this Act were not put in force until some time after it had been passed, many applications were received by Lord Lyons from persons apprehensive of being enlisted under it. He was instructed to state to Mr. Seward that British subjects who had simply declared their intention to become American citizens at a future time, and had not yet exercised the right of suffrage or any other political franchise in consequence of such declaration, ought, in the opinion of the British Government, to be allowed a reasonable time after the passing of the Act to choose whether they would quit the United States, or continue resident therein under the liability now imposed on them to compulsory military service. In compliance

with this representation, the President, on the 8th May, issued a Proclamation, which, after reciting the first clause of the Act, proceeded as follows:—

"And whereas it is claimed by and in behalf of persons of foreign birth within the ages specified in the said Act who have heretofore declared on oath their intentions to become citizens under and in pursuance of the laws of the United States, and who have not exercised the right of suffrage or any other political franchise under the laws of the United States, or of any of the States thereof, are not (*sic in orig.*) absolutely concluded by their aforesaid declaration of intention from renouncing their purpose to become citizens, and that, on the contrary, such persons, under Treaties or the law of nations, retain a right to renounce that purpose and to forego the privileges of citizenship and residence within the United States, under the obligations imposed by the aforesaid Act of Congress:

"Now, therefore, to avoid all misapprehensions concerning the liability of persons concerned to perform the service required by such enactment and to give it full effect, I do hereby order and proclaim that no plea of alienage will be received or allowed to exempt from the obligations imposed by the aforesaid Act of Congress any person of foreign birth who shall have declared on oath his intention to become a citizen of the United States under the laws thereof, and who shall be found within the United States at any time during the continuance of the present insurrection and rebellion, at or after the expiration of the period of sixty-five days from the date of this Proclamation, nor shall any such plea of alienage be allowed in favour of any such person who has so, as aforesaid, declared his intention to become a citizen of the United States, and shall have exercised at any tine the right of suffrage, or any other political franchise, within the United States."

This Proclamation was considered to afford a reasonable period for departure; and Her Majesty's Government subsequently refused to interfere on behalf of persons who had not taken advantage of the opportunity afforded to them of leaving the country.

In February 1864, an Act was passed to provide for a further enrolment. Under this Act all persons were to be enrolled "who should declare their intention to become citizens." It was further enacted—

"That no person of foreign birth shall, on account of alienage, be exempted from enrolment or draft under the provisions of this Act or the Act of which it is an amendment, who has at any time assumed

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the rights of a citizen by voting at any election held under authority of the laws of any State or Territory, or of the United States, or who has held any office under such laws or any of them; but the fact that any such person has voted, or held, or shall hold, any office as aforesaid, shall be taken as conclusive evidence that he is not entitled to exemption from military service on account of alienage."

The British Government did not consider it necessary to give Lord Lyons any instructions with regard to this Act.

It will be remarked that, throughout these discussions, no difficulty appears to have been raised by the British law of nationality. British, like American law, has hitherto regarded the national character acquired at birth as continuing uneffaced by any length of residence in a foreign country and even by permanent settlement abroad, and as not formally effaced even by a foreign naturalization.[1] But the British Government has in practice, as we see, steadily adhered to the principles that a British subject resident abroad must submit to be governed by the laws of his place of abode, be they what they may; and that the question how far it is fair and just to impose on him against his will any of the obligations of foreign citizenship, is a question of circumstances, dependent mainly on the extent to which he has practically assumed the position of a citizen, or enjoyed the substantial advantages of that character.

NOTE.

The statements of fact in this chapter have been largely borrowed from a valuable memorandum drawn up by Mr. C. S. A. Abbott of the Foreign Office, and appended to the Report of the Commissioners appointed by Her Majesty in 1868 to inquire into the Laws of Naturalization and Allegiance. I subjoin, from the same source, some cases, concisely stated, which may serve as illustrations.

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[1] A Royal Commission which reported in 1869 recommended an an alteration of the law in this respect; and a Bill is now (February 1870) before Parliament for giving effect to this recommendation.

"*Claim to British Protection of Minor Children of Naturalized Americans.*

Note.

"In October 1861, a claim to British protection was set up by three persons (who had been arrested at Baltimore) on the ground that they were minors, natural-born British subjects, whose fathers had been naturalized in the United States.

"A similar claim was urged on behalf of a Mr. James Hoy, a merchant of New York.

"The United States Government declared that such persons were American citizens, and Mr. Carlisle reported that, by the statute law of the United States, minors in this position were regarded as American citizens, and obtained and enjoyed in the United States all the rights and benefits incident to that character.

"Her Majesty's Government decided that minors who were born in Her Majesty's dominions, but whose fathers had become naturalized American citizens, ought during their minority to be considered and treated as between the two Governments, not as British subjects, but as American citizens, and that they must continue to be so considered if, after attaining their majority, they had continued to remain domiciled in the United States, and had not taken any active steps to absolve themselves from their allegiance to that country."

"*Forced Military Labour.*

"In November 1862, complaints were made of British subjects being forced to work in the trenches in the military operations in the Western States, and Mr. Stuart was informed that, as a general principle of international law, neutral aliens ought not to be compelled to perform any military service, but that allowance must be made for the conduct of authorities in cities under martial law, and in daily peril of attack from the enemy."

"*Confederate Conscripts taken Prisoners by United States.*

"In January 1864 Her Majesty's Government had brought before them the case of British subjects serving by compulsion in the Confederate armies, and taken prisoners by the United States' forces.

"Lord Lyons was instructed that an application for their release could not be put on the ground of strict right, nor could Her Majesty's Government consent to be a party to such persons being discharged on taking an oath of allegiance to the United States, but that there could be no objection to their being called upon to take an oath of neutrality."

"*Cases of Hansard, Crutchett, and Gray.*

"Mr. Joseph Hansard, a British subject, who had been for twenty-five years a resident in Georgia, having applied to Lord Russell for

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protection, was told that, if he chose to return to the United States, he must do so at his own risk.

"Mr. Crutchett, a British subject, married and settled at Washington, having applied to Her Majesty's Government to procure redress for injuries inflicted on his property by the United States' forces, was informed that he must have recourse to the same remedies as any other resident in the United States.

"Mr. Gray, a British subject, having been taken in a blockade-runner, was tried by court-martial and condemned to two years' imprisonment.

"As he had been for many years a resident in the Southern States, and had taken an active part on behalf of the Confederates, Her Majesty's Government declined to interfere."

"*Status of Sons of Americans born in British Territory.*

"In the case of a person named Charles Cole it was decided, in 1864, that the children of American citizens born in British territory, but being in American territory, could not claim the protection of Her Majesty's Government to exempt them from American military service."

"*Residents in Places under Martial Law.*

"In July 1864 a question was raised as to the position of British subjects residing at Memphis, then under martial law; and Lord Lyons was instructed to inform them that Great Britain could not interfere with the operation of that law in a foreign State, and that British subjects who wished to secure British protection must discontinue their residence in places under such military control."

"*Enrolment in New Orleans Police.*

"A general order was issued at New Orleans on the 30th July, 1864, directing 'neutral foreigners, not being subject to compulsory military service,' to be enrolled as a local police; but Her Majesty's Government did not see any reason to interfere."

"*Case of Heslop, Boyle, Miss Hill, Jenkins, and Dr. Benson.*
(1864 and 1865.)

"Mr. Heslop, a British subject holding landed property in Virginia, and who had been arrested at Baltimore, having requested British protection, Mr. Burnley, then Chargé d'Affaires, was informed that, as the circumstances of the case showed Mr. Heslop's active connection with the Confederates, it was not a case for interference.

"A similar decision was arrived at in regard to David Boyle, and to a Miss Hill, arrested at New Orleans.

"Dr. Benson, a Canadian, applied for protection against being tried by court-martial. As it appeared that he was domiciled in Kentucky and was an army contractor, Her Majesty's Government left him to the operation of the American law."

"*Proclamation of Penalties on Aliens concerned in Blockade Running.*

"In March 1865 the President issued a Proclamation imposing the penalty of confinement as prisoners of war upon domiciled aliens and non-resident foreigners, who had been or should have been engaged in violating the blockade, and making the continuance of any person (who might afterwards be decided by martial law to fall within this category) for twelve days in the United States a ground for his detention in military custody until the end of the war.

"Lord Lyons was directed to remonstrate strongly against British subjects being thus imprisoned.

"It does not appear that the Proclamation was enforced."

CHAPTER XVII.

Course of the War.—Obstinate Resistance of the South.—Seizure of the *Chesapeake* and other Ships.—The St. Alban's Raid.—Popular Feeling in England.—France proposes Joint Mediation.—The British Government declines to concur.—Distress in the English Cotton-manufacturing Districts.—Resentment of the South towards Great Britain.—Fall of the Confederacy, and Conclusion of the War.—Assassination of President Lincoln.—Subsequent Negotiations.

We have now passed in review the chief questions which arose during the war, arranged partly in the order of time, but principally in reference to their connection with one another. Something remains to be said of the struggle itself; of the colour which it assumed as it wore on, and its final close; of the light in which it was regarded in England, and the feelings which her course of action excited in the Government and people of the Confederate States.

The shock of arms on the Potomac and the events which immediately followed it rudely dispelled the illusion, cherished to the last moment in the South, that the people of the North—who were thought to be unwarlike, absorbed in the pursuit of gain, and largely dependent for their wealth on Southern industry—would recoil from the attempt to re-conquer a vast territory and numerous population at the frightful cost of a civil war. On the other side it had been hoped that the same terrible calamity, when seen to be inevitable, would daunt the courage of the revolted States; and that the deep attachment to the Union which was believed to animate all Americans would re-assert itself

at the last extremity, and bring back the South to its allegiance. This hope also vanished not less rapidly, and with it the hallucination, real or assumed, which discerned, or affected to discern, in the revolt a mere ordinary sedition, a transient outbreak of turbulent discontent. Then were seen in the most striking light the sanguine self-reliance and unconquerable elasticity of temperament, the capacity of thoroughly apprehending a great public object, the resolute perseverance and cheerful endurance of disaster and hardship, which are among the features of the American character. The Federal plan of action was simple in itself, though apparently confused by the number of separate armies acting independently of one another, by the great area over which they moved, and by the circumstance—peculiar to America—that this area was parcelled out, not into mere provinces, but into States, to each of which, apart from the rest, its own population clung, and the re-conquest of which, one by one, was a matter of political as well as military importance. To gain possession of the Mississippi—to blockade the whole coast, cut off all foreign trade, and occupy every assailable point on the seaboard—to force back the Confederate armies from the border, wrest from them Tennessee, and thus lay open the heart of the Confederate dominion—to hem them in by these means within a constantly narrowing circle—above all to achieve the conquest of Virginia, and strike a crushing blow at the political centre of the Confederacy—these were the objects which the Government of the United States kept in view from the beginning, and which it attained slowly and painfully, at an immense sacrifice of life, by dint of sheer weight and perseverance. The country to be subdued was of vast extent; a large part of it—broken, hilly, covered with thick forest, and containing few considerable towns—presented peculiar difficulties to an invader; and every natural advantage was turned to account by the

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hardihood and activity of the Confederates, and, more than all, by the generalship of a very great soldier, whose genius for war, joined to a pure and elevated character, shed an extraordinary lustre over the defence of the South. New Orleans surrendered in April 1862; but it was not until the middle of the summer of 1863 that the last Confederate stronghold on the Mississippi fell into the hands of the North. The struggle for Kentucky and Tennessee was protracted nearly to the end of the war, the Federal forces gaining ground inch by inch with great difficulty, now winning battles, now losing them. During three successive years, great armies, the finest and most completely appointed that the North could bring into the field, and commanded by the Generals who had most distinguished themselves elsewhere, were pushed forward against Richmond, only to be defeated and driven back with heavy loss. In October 1863 Meade was retreating before Lee over the very ground on which M'Dowell had fought the disastrous action of Bull Run more than two years before. Twice the Confederates crossed the Potomac in force, and two pitched battles were fought on Northern soil—the first in Maryland, the second in Pennsylvania. A powerful navy, created by unremitting exertion and at great expense, hovered round the whole Southern coast, and reduced almost every place that could be attacked from the sea; but its strength was spent in vain on Charleston and Wilmington, and Mobile continued to hold out to the last moment, though the forts which protect the harbour were successfully assailed by Farragut in August 1864.

The hostility of the South during this period grew more angry and implacable; the military spirit which the actual presence of war seems to awaken even in the most phlegmatic races spread over the country like wildfire; and the sense of a common danger, of sacrifices made and sufferings borne in common, worked its

natural effect in welding together the whole people, and destroying every vestige of attachment to the Union. The privations inflicted on rich and poor, the impoverishment of families, the devastation which here and there attended the passage of Northern armies, and the tremendous carnage which incessantly thinned the forces and drained the population of the revolted States, seemed only to steel their resolution and inflame to the utmost that bitter and unnatural animosity which is the peculiar curse of civil war. Valuable property was everywhere remorselessly destroyed, if there was a chance of its falling into the hands of the Federal authorities; such attempts as were made to revive peaceful industry and commerce in the districts which they were able to hold, appear to have entirely failed; and the Federal commanders, instead of being welcomed, as they had hoped, in the places of which they gained possession, found themselves received with dogged and undisguised enmity. "We were 2,500 men," wrote General Butler, describing the state of New Orleans after its occupation in April 1862—"We were 2,500 men in a city seven miles long by two to four wide, of 150,000 inhabitants, all hostile, bitter, defiant, explosive." A like effect, though to a less degree, seems to have been produced in those Border States, whose unhappy fortune it was to be overrun by the contending armies. Mr. Anderson, writing in October 1862, thus describes the state of feeling in parts of the country visited by him:—

"In Kentucky I found it generally admitted that a vote taken now in the State would give a large majority for Secession, whereas it was asserted that a few months ago it would have had precisely the opposite result. When the Confederate troops held portions of Kentucky during last winter and the early spring, previously to the evacuation of Bowling Green, it is said that they were greatly disappointed at the want of sympathy which they experienced. At the time when I was in the State, and when the Confederate forces were again entering Kentucky, large numbers of young men were flocking to join them, and it is asserted that this time the Confederates have had no reason to complain of their reception.

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"In Tennessee and Arkansas I was assured by Federal officers of high rank that the Union feeling which they had hoped to develope no longer existed; and in Missouri it was calculated that four-fifths of the State would vote for Secession. I believe, however, that other causes have been at work to produce this result. The outrages committed by the half-disciplined Federal troops on friend and foe alike have alienated the former and embittered the latter, and have greatly contributed towards producing the state of things which it is now too late to remedy.

"So many instances of this came under my own observation that I cannot doubt that there is very great foundation for the statements that are made on this head. At Memphis there was no security beyond the immediate precincts of the town. The town itself was deserted, no business of any sort being transacted; the stores were kept open because it was so ordered by the authorities: if a store was closed, or a private house left without occupants, an official at once took possession and leased the premises, to anybody who came forward, at a nominal rent. Hence the inhabitants who wished to avoid this kept up a show of business, but with no reality; not a ship lay at the wharves, and not a waggon was to be seen in the streets.

"The last year before the war Memphis exported 400,000 bales of cotton; this year I am told not 2,000 have been shipped. This, however, is the natural result of the war; but in the surrounding country houses were nightly broken open, property of every description stolen, life sacrificed, and no attempt made to repress these excesses. As Unionists and Secessionists fared alike, the former were driven to make common cause with the latter, and to enter the Confederate ranks or to join some of the guerilla bands with which the country swarmed.

"I had a good deal of conversation on this subject with an officer who felt very strongly on the subject. He had done his utmost to enforce respect for private property, and he assured me that, when by this course he had restored confidence, he found that in both States considerable Union feeling began to develope itself. A column of Federal troops marched through Arkansas, destroying everything in their track, pillaging houses, destroying plantations, carrying off slaves, and committing even worse outrages. My informant said that following up afterwards in a portion of this line, he found that the whole Union feeling had disappeared. This account was corroborated by some Arkansas planters whom I met at various times, and from whose account the State seemed to have relapsed almost into a state of barbarism. My informant told me that his experience was the same; his successors had given every license to their soldiers, and his Union friends had disappeared."

These feelings were exasperated still further by President Lincoln's Proclamation of 1st January, 1863,

by which all slaves in the States or parts of States deemed to be in revolt at the time were declared free; an act, however, which did not produce the effects apprehended from it, since the negroes remained quiet, apparently content to let their future lot be decided by the fortune of war. Meanwhile the hopes of the Southern people were kept alive by the many vicissitudes of the contest, and especially by the successes gained over the Federal armies in Virginia; and exaggerated reports of the difficulties experienced by the Northern Government in raising money and enforcing the drafts for the militia encouraged the delusive expectation, to which they tenaciously clung, that every fresh campaign would be the last.

During the latter part of the war the character of the Confederacy, which had suffered from the machinations of its agents in Europe, was tarnished by other acts more desperate and far more indefensible. A steamer, the *Chesapeake*, carrying passengers and goods between New York and Portland—a second, the *Joseph Gerrity*, freighted with cotton from Matamoros — a third, the *Roanoke*, running to New York from Havana — and a fourth, plying on Lake Erie, were seized and plundered one after another, by small parties of Confederates, who had paid their passage-money and gone on board without attracting notice. The *Chesapeake*, deserted by her captors, was found in an unfrequented bay on the coast of New Brunswick by a Federal gun-boat, which took possession of her and carried her into Halifax; and a decree of the local Vice-Admiralty Court afterwards restored her to her owners, with so much of her cargo as had escaped pillage. The *Joseph Gerrity* was navigated into Belize in Honduras. The *Roanoke*, after an attempt to obtain coal at Bermuda had been frustrated, was burnt at sea; the Lake Erie steamer was scuttled, and another small vessel, which she had been made instru-

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mental in taking, shared the same fate. In October 1864 a handful of desperadoes sallied from Canada into Vermont, and met, at the little town of St. Alban's, another party from Chicago, where the plan of the expedition seems to have been laid. They mixed unsuspected with the inhabitants, and at a favourable moment threw off their disguise, made ineffectual attempts to set the place on fire, robbed one or two banks of all the specie they could find, and succeeded in re-crossing the frontier with their booty. Several unarmed persons were killed or wounded in these treacherous enterprises. Although they do not seem to have been inspired by any meaner motive than hostility to the United States, they were exploits more worthy of straggling marauders than of men engaged in fair and honourable warfare; and the perpetrators of them, had they fallen into the hands of the Federal authorities, would have had no claim to be treated as prisoners of war. That the neutrality of Canada was not seriously compromised, was due to the vigour and alacrity displayed by the local authorities, as well as by the Canadian Government. The depredators were arrested and stripped of their plunder; a detective police, under special stipendiary magistrates, was stationed along the border; and thirty companies of volunteers were called out and embodied for permanent duty.[1] These measures were effectual in preventing any renewed violation of the territory of the Dominion.

These occurrences gave rise, as was to be expected, to

[1] "I think," wrote Lord Monck, "it is not a little creditable to the volunteers, and to those who conducted the arrangements, that the first intimation the force received that their services would be required was by the General Order of 19th December, and that the three battalions are now at their respective stations; some of the companies of which they are composed having had to travel a distance of nearly 700 miles in order to reach their destinations. I have had offers of service from various corps all over the province; and I should have had no difficulty, were it desirable, in raising a large force."—*Viscount Monck to Mr. Cardwell*, 29th December, 1864.

some correspondence between the British and American Governments. The commander of the Federal gun-boat which had been instrumental in recovering the *Chesapeake* had acted incautiously in not only seizing her in British waters but boarding and searching a British schooner which lay hard by, and taking out of her one of the men concerned in the capture of the *Chesapeake*. The American Government censured and disavowed these acts; and the President also disapproved and revoked a departmental order, issued after the incursion into Vermont, by which United States' officers had been directed to pursue marauders, if necessary, across the Canadian frontier. The failure, on the other hand, of Mr. Seward's endeavours to obtain the extradition of the persons who had taken part in these various enterprises became a subject of dissatisfaction and complaint.[1]

In Europe, and by the English people in particular, the progress of the contest was watched with varied feelings. That the division of sentiment which had armed a large section of the American people against the remainder should be reflected in England, and that both North and South should find sympathizers and partisans here, was natural and inevitable. Opinion in England had been generally more abolitionist than opinion in the United States; and no one will now dispute that the

[1] The reasons for this failure were tersely expressed by Mr. Justice Blackburn, in the case of Patrick Ternan, who was arrested at Liverpool on a charge of having been concerned in the seizure of the *Joseph Gerrity*:—

"The case is either one of piracy by the law of nations—in which case the men cannot be given up, because they can be tried here—or it is a case of an act of warfare, in which case they cannot be tried at all."

The St. Alban's raiders (as they were called) were held in Canada to belong to the second of these two classes. There was evidence that their leader held a commission in the Confederate army. They were arrested, but discharged on the ground of a supposed informality in the warrant. Such of them as could be found were immediately afterwards arrested again, and discharged, after lengthened argument, for the reason above stated. A full report of the proceedings, compiled by L. N. Benjamin, B.C.L., was published at Montreal in 1865.

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existence of slavery in America was the true cause of the war, created the dissensions which led to it, and inspired the South with the fatal ambition to be independent. But the war itself was not presented to Europe in the light of a contest for the abolition of slavery, nor was it such in fact: independence on the one side, the integrity of the Union on the other, were its true, as they were its avowed, objects. Had the Southern people relinquished their project of independence, they would certainly have been permitted to retain their slaves; had they been never so willing to abandon slavery, it is equally certain that they would not have been suffered to become independent. The average level of information about American politics in England is no higher than the average level of information about English politics in America; and in both countries opinion is liable to be misled by merely incidental circumstances which can be apprehended with ease, and by appeals to established prejudice and unreflecting sentiment. The friends and advocates in the North in this conflict were zealous and very numerous: they spoke at public meetings, and wrote freely and earnestly in the public journals. But there were also many who, heartily detesting slavery, nevertheless thought the cause of the South just, and that of the North unjust; and no one who mixed at the time with different classes of men will dispute that this opinion was assisted by the natural inclination to lean towards the weaker side, the natural horror excited by accounts of devastation and carnage, the natural admiration for a striking display of courage and endurance. It was assisted also by the idea, openly expressed by some and warmly condemned by others, that the establishment of an independent Southern Confederacy would be a fortunate event for England and for the world. And these opposing views were brought, as the war proceeded, into sharper relief by a cause familiar in this country, and which can hardly be unknown in the United States.

Party organization in England has a tendency to attract to itself all floating opinions on political subjects, and, by associating them with one or other of the two great parties constantly opposed in Parliament, to give them a hardness of outline and an apparent solidity they would not otherwise have, and push them a little further than they would probably advance if left to themselves. Yet, whilst it does this, it tends also to correct extravagances, since the Parliamentary action of each party is controlled by its leaders, and the leaders of each either have or hope to have the responsibilities of office and power.

Had sympathy with the South been the active, dominant influence which Americans appear to suppose, the British Government would certainly have deserved high praise for steadfastly refusing to interfere on behalf of the Confederates, or even to recognize them as independent. But in truth it was so far from being dominant that any English Government which should have determined to interfere could not have retained office for a month, and any Minister who was known to have proposed it would have irretrievably ruined his own political career. Several times during the first three years of the war, attempts were made to obtain from Parliament some expression of opinion favourable to the recognition of the Confederacy; but not one of these was originated or encouraged in either House by any man of political influence, and every one of them was negatived or withdrawn without a division.

The steadfast determination of the Government neither to say nor do anything which could reasonably be construed into an interference was tested in November 1862, when it was proposed by the Emperor of the French that the Courts of France, Russia, and Great Britain should tender their good offices to both belligerents, in the hope of preparing the way for an accommodation. M. Drouyn de Lhuys, in addressing himself to the British Government, dwelt on the

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"innumerable calamities and immense bloodshed" which attended the war, and on the evils which it inflicted upon Europe. The two contending parties, he said, had up to that time fought with balanced success, and there appeared to be no probability that the strife would soon terminate. He proposed, therefore, that the three Courts should join in recommending an armistice for six months, during which means might be discovered for effecting a lasting pacification. The British Government declined to take part in such a recommendation, being satisfied that there was no reasonable prospect of its being entertained by that of the United States. "Depend upon it, my Lords," said Earl Russell, addressing the House of Peers in 1863, "that, if this war is to cease, it is far better that it should cease by a conviction both on the part of the North and on that of the South that they can never live together again happily as one community and as one Republic, and that the termination of hostilities can never be brought about by the advice, the mediation, or the interference of any European Power."

It was about this time that the pressure of the blockade on British industry was most severely felt. Seldom indeed, if ever, has there been so striking an example of the hardships which war may inflict on neutrals remote from it, and innocent of all participation in it, as the distress which then existed in the cotton-manufacturing districts of England. In an earlier chapter of this book we have seen how completely the English cotton-manufacture had become dependent on the supply of raw material from America, or rather how it had been created and developed by the American supply. The average profits of the business were not high; there has been a tendency (as has been already observed) to reduce this scanty margin by outrunning the demand; and a great contraction of the manufacturer's business, involving a loss of interest on capital

invested and a depreciation of plant and machinery, was likely to exhaust it rapidly, and sweep away the fund available for the maintenance of the workman. To the labourer, therefore, as well as to the millowner, cheap cotton was a necessary of life; the cessation of the supply was starvation to the one, and, if long-continued, was ruin to the other. Cotton of average quality,[1] which cost 7*d.* a pound at Liverpool in December 1858, and a fraction less than 1*s.* in December 1861, sold in December 1862 for 24½*d.*, and for 27¾*d.* during the corresponding month of 1863. The effect of this was to throw out of work a vast and industrious population accustomed to good wages, and to make them dependent for a bare subsistence on the local rates and on public charity. In December 1862 half a million of persons, condemned to enforced and miserable idleness, were receiving relief from these sources—relief necessarily scanty, painful to the recipients, and insufficient to save them from many severe hardships and privations. This state of things continued during the year 1863, though the number of the unemployed gradually diminished. Many left the district in search of other ways of gaining a livelihood; many emigrated; many others found employment on public works, for which a loan was granted out of the national exchequer. The total amount expended, within the knowledge of the superintending Relief Committee, up to April 1863, was 1,853,319*l.* Contributions flowed in abundantly from all parts of the British empire and more than one shipload of provisions sent from the United States bore witness to the sympathy there felt for this great and unmerited calamity, which was borne by the sufferers, for the most part, with singular fortitude and uncomplaining patience. As the war continued, supplies of cotton, inadequate in quantity, and at greatly enhanced prices, began to be drawn from other parts of the

[1] Middling Orleans.

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world—from Turkey, Egypt, and above all from India. The export of Indian cotton was trebled, and its value increased fourfold; and the Bombay peasant became a gainer by the disaster which had ruined the American planter, and impoverished the English manufacturer and artisan. The wants of his narrow existence could not at first expand with his new wealth: it has been lately stated on authority that ploughshares and the tires of cart-wheels made of solid silver might at that time have been seen in an Indian village. But the use of money is soon learnt by a naturally thrifty race; and with the money that flowed to the East in payment for raw cotton, trees were planted, wells dug, fields irrigated, and brick cottages built instead of wretched hovels, and these marks of improvement yet remain. It may be added that, heavy as was the loss occasioned by the depression of this important branch of industry, it appears to have affected but little the general prosperity of Great Britain.

The immovable firmness of the British Government was a bitter disappointment to the people of the revolted States. They wished to be recognized as independent in order that they might become so; and, in proportion as it became more clear that their independence was not actually achieved, and more doubtful whether it would ever be secured at all, they the more keenly resented the refusal. They had reckoned at first with confidence on being able to command, in case of need, the countenance and support of England, merely as growers of cotton;[1] they had afterwards tried to

[1] "Without firing a gun, without drawing a sword, should they make war on us, we could bring the whole world to our feet. What would happen if no cotton was furnished for three years? I will not stop to depict what every one can imagine, but this is certain, England would topple headlong, and carry the whole civilized world with her. No, you dare not make war on cotton. No Power on the earth dares to make war upon it—Cotton is king."—*Speech of Mr. J. H. Hammond, in the Senate*, 4th March, 1858.

tempt her by expatiating on the profits to be reaped by opening the blockade. They had hoped to gain her by means of her material interests; and, when she proved unyielding, they inveighed against her as selfish, calculating, and inhuman.[1] They affirmed that her neutrality was not sincere, but warped in favour of the North. They even contrasted the treatment received by Mr. Mason in London, and the coldness and brevity of Lord Russell's replies to his representations, with the greater courtesy extended to Mr. Slidell at Paris.

Mr. Mason remained here as the authorized agent of the Confederate Government until September 1863, with the vague hope that some unforeseen turn of events might yet shake the resolution and reverse the policy of Great Britain. At the end of two years this hope finally gave way, and he announced to Lord Russell the termination of his mission :—

Mr. Mason to Earl Russell.

"24, *Upper Seymour Street, Portman Square,*

"My Lord, "*September* 21, 1863.

"In a despatch from the Secretary of State of the Confederate States of America, dated the 4th of August last, and now just received, I am instructed to consider the commission which brought me to England as at an end, and I am directed to withdraw at once from the country.

"The reasons for terminating this mission are set forth in an extract from the despatch which I have the honour to communicate herewith. The President believes that 'the Government of Her Majesty has determined to decline the overtures made through you for establishing by Treaty friendly relations between the two Governments, and entertains no intention of receiving you as the accredited Minister of this Government near the British Court.

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[1] "It is to be observed that, during the whole continuance of the war up to this time, the British Government had acted with reference to it in a spirit of selfish and inhuman calculation; and there is indeed but little doubt that an early recognition of the Confederacy by France was thwarted by the interference of that cold and sinister Government, that ever pursues its ends by indirection and perfects its hypocrisy under the specious cloak of extreme conscientiousness."—Pollard's *First Year of the War*, p. 347.

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"'Under these circumstances your continued residence in London is neither conducive to the interests nor consistent with the dignity of this Government, and the President therefore requests that you consider your mission at an end, and that you withdraw with your Secretary from London.'

"Having made known to your Lordship on my arrival here the character and purposes of the mission entrusted to me by my Government, I have deemed it due to courtesy thus to make known to the Government of Her Majesty its determination, and that I shall, as directed, at once withdraw from England.

"I have, &c.
(Signed) "J. M. MASON."

Earl Russell to Mr. Mason.

"Sir, "*Foreign Office, September* 25, 1863.

"I have had the honour of receiving your letter of the 21st instant, informing me that your Government have ordered you to withdraw from this country, on the ground that Her Majesty's Government have declined the overtures made through you for establishing by Treaty friendly relations, and have no intention of receiving you as the accredited Minister of the Confederate States at the British Court.

"I have on other occasions explained to you the reasons which have induced Her Majesty's Government to decline the overtures you allude to, and which have hitherto prevented the British Court from recognizing you as the accredited Minister of an established State.

"These reasons are still in force, and it is not necessary to repeat them.

"I regret that circumstances have prevented my cultivating your personal acquaintance, which, in a different state of affairs, I should have done with much pleasure and satisfaction.

"I have, &c.
(Signed) "RUSSELL."

"Earl Russell," wrote the Confederate Secretary of State shortly afterwards to Mr. Slidell, "having declined a personal interview with Mr. Mason, the latter, after some time spent in an unsatisfactory interchange of written communications, has been relieved of a mission which had been rendered painful to himself and was productive of no benefit to his country."

The anger of Mr. Davis's Government fell soon afterwards on the British Consuls resident in the South; and they received a formal notification that they "could no

longer be permitted to exercise their functions, or even reside, within the limits of the Confederacy." The warmth with which these officials had remonstrated against the compulsory enlistment of British subjects in the Confederate forces had given no little offence. The other reasons assigned were, that it was a part of their duty to receive instructions from a Minister residing at Washington and accredited to the President of the United States; and that the British Government had lately dismissed one of them, who had suffered himself to be persuaded to send specie destined for payment of interest on the public debt of the State of Alabama from a blockaded port to London in a British ship-of-war.[1]

[1] Lord Lyons's view of these complaints was thus expressed in a despatch to Earl Russell, dated 20th November, 1862:—

"Mr. Benjamin objects very strongly to the British Consuls in the Southern States being under the orders of Her Majesty's Legation at Washington. This objection does not appear to me to be by any means unreasonable. I have indeed, as your Lordship is aware, long been of opinion that the connection between this Legation and the Consulates in the South was embarrassing and inconvenient, with regard both to the Government of the United States and to the *de facto* Government of the Confederate States. Mr. Benjamin's complaint concerning the dismissal of Mr. Magee by Her Majesty's Government is less reasonable. Mr. Magee was dismissed for assisting persons in the Confederate States to export specie from a blockaded port, and this was an act manifestly inconsistent with his duty as the officer of a neutral Sovereign, and a flagrant violation of the Queen's Proclamation. It is, not, however, surprising that my endeavours to prevent Mr. Magee's committing this breach of blockade should have increased the displeasure with which the Confederates viewed the connection between this Legation and the Southern Consulates. Mr. Benjamin's dissertation on the duty of paying debts may, indeed, be passed over, as entirely beside the question. I was of course as desirous as any one could be that money due to British subjects should be remitted to them; and I have ever been most anxious to diminish in every possible way, not inconsistent with positive duty, all the hardships inflicted on my countrymen by the blockade. But to export specie from Mobile was a manifest breach of the blockade of that port, and to send it through the blockading squadron in a British man-of-war was a direct violation of the understanding with the United

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Before the first six months of the war were over, it must have been tolerably clear to the rulers of the Confederacy that to achieve independence they must rely on themselves alone. There is nothing, it is true, in which persons engaged in a desperate struggle are so likely to deceive themselves as the chance of obtaining succour from abroad; but there is no reason to suppose that they were under any actual delusion on this score, and they well knew that any official recognition, unless it led sooner or later to direct intervention in their favour, would be of no real use to them, and could indeed serve only to exasperate and embitter their adversaries. War is a game of hard blows: he who can strike hardest, and go on striking longest, wins. When the spring of 1864 approached, there remained little room to doubt that the Confederacy was being overpowered, gradually but surely. The revolted States west of the Mississippi, though still to a great extent unsubdued, were wholly cut off from those on the Atlantic; all Kentucky and Tennessee, though open

States' Government in virtue of which Her Majesty's ships communicated with the blockaded ports. So long therefore as Her Majesty's Consuls in the South were under my orders, it was undoubtedly my duty to prevent their being concerned in any such proceeding. It so happened that the Confederate authorities were, at the time, particularly anxious to find the means of exporting specie, in order to pay for munitions of war procured in Europe; and it appeared afterwards that they had hoped that the British Government would allow Her Majesty's ships to be employed to carry through the blockading squadron specie sent in payment of purchases of this description made in Great Britain. It was natural therefore that my attempt to prevent the breach of blockade at Mobile, and the dismissal of Mr. Magee by Her Majesty's Government for being concerned in it, should be regarded with displeasure by the Confederates. It was of course equally my duty to hinder the British Agents under my orders from committing breaches of blockade, whatever might be the article to be exported, and whatever reasons the belligerent whose ports were blockaded might have for desiring the exportation of it. But it is not surprising that this affair should have increased the susceptibility of the Confederates with regard to the connection between this Legation and the Southern Consulates."

to incursions from the south, were practically within the Federal lines, and the Federal forces were posted among the most easterly ranges of the rugged hill country on the confines of East Tennessee, Georgia, and Alabama. The State of Mississippi had been overrun and in part laid waste. The area from which the Confederates were able to draw reinforcements and supplies was thus reduced within comparatively narrow bounds, and their armies were fast dwindling away. Their whole forces in May 1864 were reckoned at 220,000 men; but of these 50,000 were in Texas and the other States west of the Mississippi; and the troops which could be brought into the field for the defence of Virginia, including those in the Shenandoah valley and the garrison of Richmond, hardly exceeded 60,000. The Federal army at the same date numbered in the aggregate not less than 970,000 soldiers, of whom (deducting those in hospital, on leave, and employed on detached service) upwards of 662,000 were available for duty. Including the reserves in and around Washington, there stood in Virginia or on its outskirts, ready for the spring campaign, more than 280,000 men. These huge masses of troops were now under the supreme control of General Grant, who commanded in person in Virginia, while in Tennessee three armies were under the orders of his principal lieutenant, Sherman, a bold and very skilful soldier.[1]

The forces of the Union were thus gathered into the hands of two leaders, capable of handling them as they had never been handled before. Both were men of iron determination, and thoroughly inured to war; both saw clearly the object to be accomplished, and the way to accomplish it. It is surprising that under such circumstances the war should have lasted, as it did, for twelve months longer. Yet, during all the rest of the year 1864, Lee stood at bay in Virginia, foiling his assail-

[1] These numbers are borrowed from Lieutenant-Colonel Fletcher's *History of the American War*, vol. iii, chap. xi.

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ants at every point, and inflicting on them tremendous losses. But these losses could be repaired; whilst his own strength, which there were no means of repairing, was broken down and exhausted by incessant fighting.[1] Meanwhile Sherman, descending into Georgia from the hills, had fought his way to Atlanta, a town from which the Confederates had been accustomed to draw their most important supplies; and, after destroying it, had marched on Savannah, leaving the broad track along which his three corps moved on parallel lines a waste behind him. The army which he had overpowered, instead of attempting to join or co-operate with Lee, turned northwards, and was thenceforth of no more service to the Confederate cause. By the 1st February he had commenced his march through the Carolinas, in the face of a Confederate force, swept up from various quarters and headed by an excellent soldier, General Johnson, but only strong enough to harass, without seriously obstructing, his progress. As he advanced, Charleston and Wilmington fell into his hands, with all the Atlantic seaboard. Of the cities of the Confederacy there remained only Richmond and Mobile; and the little army which still fought bravely, without rest or relief, in the lines around the Virginian capital became gradually hemmed in by over-

[1] General Grant's plan of action was thus described by himself, in a Report dated 22nd July, 1865:—"I was determined, first, to use the greatest number of troops practicable against the armed force of the enemy, preventing him from using the same force at different seasons against first one and then another of our armies, and the possibility of repose for refitting and producing necessary supplies for carrying on resistance. Second, to hammer continuously against the armed force of the enemy and its resources, until by mere attrition, if in no other way, there shall be nothing left to him but an equal submission with the loyal section of our common country to the Constitution and laws of our land. These views have been kept constantly in mind, and orders given and campaigns made to carry them out. Whether they might have been better in conception and execution, is for the people who mourn the loss of friends fallen, and who have to pay the pecuniary cost, to say."

whelming numbers, whilst the enemy's cavalry, issuing from the hills on the west, destroyed such communications with the interior as Lee had been able to maintain, and cut off all his sources of supply. With the fall, on the 2nd April, of Petersburg, a place due south of Richmond on the Appomattox River, against which Grant's efforts had for a long time been directed, the defence finally gave way; on the 3rd, Richmond surrendered; on the 9th, the handful of troops, wasted by hunger and fatigue, with whom Lee had marched westwards, only to be intercepted by Sheridan, laid down their arms and dispersed to their homes; Grant meeting his vanquished opponent courteously, like a true soldier, and conceding him honourable terms of capitulation. The example of Lee was followed by the other Confederate leaders who had continued to keep the field. Mr. Davis was made prisoner and thrown into Fortress Monroe, and the Southern Confederacy was at an end.

The crime which at this moment threw a deep gloom over the hardly-earned triumph of the North belongs to general history. Mr. Lincoln's cruel death—a death which he would have cheerfully faced for the sake of his country—created a profound sensation in England, where the virtues of his character had become known, and where he had many fervent admirers. In both Houses of Parliament addresses were moved by Ministers of the Crown, expressing sorrow and indignation, abhorrence of the crime and sympathy with the Government and people of the United States. These condolences were fitly acknowledged by the American Government. "This communication," wrote the acting Secretary of State,[1] "conveying to the Government and people of the United States such emphatic and earnest manifestations of friendship and sympathy from a great and kindred

[1] *Mr. Hunter to Mr. Adams*, 22nd May, 1865. Mr. Seward and his son had also been the objects of a murderous attack, from which they hardly escaped with life.

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nation, is received with deep sensibility and grateful appreciation."

All that now remained for neutral Powers to do was to recall, as they might judge expedient, the orders they had issued for the protection of a neutrality which had expired with the expiration of the war. Early in May 1865 the British Government cancelled so much of the Instructions of 31st January, 1862, as set a limit to the time during which armed ships of either belligerent were permitted to stay in British waters, and to the supplies which they were suffered to receive.[1] On the 25th May a newspaper copy of a Proclamation issued on the 10th by the new President of the United States, declaring that armed resistance to the authority of the Government "might be regarded as virtually at an end," reached London; and on the 30th the Proclamation was officially communicated by Mr. Adams to Earl Russell. News that Mr. Davis was a prisoner had arrived on the 26th. On the 2nd June Instructions were issued announcing that "Her Majesty's Government recognize that peace has been restored within the whole territory of which the United States of North America, before the commencement of the civil war, were in undisturbed possession." Vessels of war carrying the Confederate flag were therefore to be no longer permitted to enter or remain in British ports. These orders were accompanied by some temporary reservations, which are sufficiently explained in the following extract from a despatch to the British Minister at Washington :—

"Her Majesty's Government, having, in common with all the maritime Powers of Europe, acknowledged the belligerent right of blockade on the part of the United States, and having recognized the existence of a belligerent against whom that right was exercised, in conformity, as they are convinced, with the law of nations and the practice of centuries, could not be expected on their part to shrink from the consequences of the course they had deliberately adopted. Her

[1] See above, p. 142.

Majesty's Government, therefore, considered that a due regard for national faith and honour required that any Confederate vessel-of-war called upon to depart from Her Majesty's ports, harbours, or waters should have the benefit of the twenty-four hours' rule. But you will observe to Mr. Seward that this rule is then to be enforced for the last time.

"Consequently no Confederate vessel-of-war, taking advantage of this rule, could ever again have the benefit of it.

"Her Majesty's Government have, in a like spirit, allowed that vessels lying in Her Majesty's harbours or waters, or which, during the space of a month, shall come into these harbours or waters, shall be permitted to disarm and assume a peaceful character. Otherwise vessels at sea, ignorant of the termination of the war, might be driven without coals or sails to perish on the neighbouring rocks, or to founder at sea. Such inhospitality would not become the character of the nation for good faith and honour, or for humanity.

"But you will observe that Her Majesty's Government have instructed their authorities in distant ports distinctly to apprise the Commander of any such Confederate vessel, that he is to expect no further protection from Her Majesty's Government, except such as he may be entitled to in the ordinary course of the administration of the law in time of peace. The twenty-four hours' rule would not be applicable to such case.

"The Government of the United States will, therefore, be entitled to maintain that such vessels are forfeited, and ought to be delivered to the United States upon reasonable application in such cases made. Only such application must be made good in a British court of law if the vessel is found in British waters.

"In the case of a vessel captured at sea by a naval force of the United States, under whatever flag, the claim ought to be made good in a court of law of the United States."[1]

The American Government, bent on being consistent to the last, found some fault with these reservations, but forbore to enter into a useless discussion. "This Government freely admits that the normal relations between the two countries being practically restored to the condition in which they stood before the civil war, the right to search British vessels has come to an end by an arrangement satisfactory in every material respect between the two nations."[2]

[1] *Earl Russell to Sir F. Bruce*, 6th July, 1865. For the Instructions themselves, see above, p. 142.

[2] *Mr. Seward to Sir F. Bruce*, 19th June, 1865.

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The French Government issued, on the 5th June, 1865, a Circular substantially the same as the British Instructions, except that it contained no provision for allowing Confederate ships to remain in port disarmed. The Spanish Government abrogated on the 4th June, by Royal Decree, its regulations published at the beginning of the war.

The end of the struggle left the South in a very miserable condition. Its population had been thinned by the sword and ruined by the drying up of every source of wealth; in many places the people were on the very brink of starvation. For a long time after all resistance had ceased they were held under military rule; and the question how soon and under what conditions it was expedient to restore them to the enjoyment of civil and political rights became the subject of vehement and protracted dissensions between the Federal Executive and Congress. In January 1870, after nearly five years of peace, we learn that the great State of Virginia has at last been emancipated from the condition of a subject territory and re-admitted to representation in Congress. So jealous has been the distrust of the vanquished people, and so stern the measures of repression judged necessary to subdue in them the spirit of disaffection. That national feeling may revive throughout the South with reviving prosperity, and that the deep and painful wounds which have been inflicted may be perfectly, if slowly, healed, must be the warm desire of all who feel an interest in the future of America.

I have said that the complaints urged against England by the American Government during the war, and the claims founded on them, were renewed after its close. Hence arose a fresh correspondence and a negotiation, unhappily abortive, which demand a very few words. Some extracts from the correspondence will show with what views and in what manner the two Governments approached the subject.

Mr. Seward to Mr. Adams. Chap.XVII.

(Extract.)

"Sir, "*Department of State, Washington, August* 27, 1866.

"You will herewith receive a summary of claims of citizens of the United States against Great Britain for damages which were suffered by them during the period of our late civil war, and some months thereafter, by means of depredations upon our commercial marine, committed on the high seas by the *Sumter*, the *Alabama*, the *Florida*, the *Shenandoah*, and other ships-of-war, which were built, manned, armed, equipped, and fitted out in British ports, and despatched therefrom by or through the agency of British subjects, and which were harboured, sheltered, provided, and furnished as occasion required, during their devastating career, in ports of the realm, or in ports of British Colonies in nearly all parts of the globe.

"The Table is not supposed to be complete, but it presents such a recapitulation of the claims as the evidence thus far received in this Department enables me to furnish. Deficiencies will be supplied hereafter. Most of the claims have been from time to time brought by yourself, as the President directed, to the notice of Her Majesty's Government, and made the subject of earnest and continued appeal. That appeal was intermitted only when Her Majesty's Government, after elaborate discussions, refused either to allow the claims, or to refer them to a Joint Claims Commission, or to submit the question of liability therein to any form of arbitration. The United States, on the other hand, have all the time insisted upon the claims as just and valid. This attitude has been, and doubtless continues to be, well understood by Her Majesty's Government. The considerations which inclined this Government to suspend for a time the pressure of the claims upon the attention of Great Britain were these:

"The political excitements in Great Britain, which arose during the progress of the war, and which did not immediately subside at its conclusion, seemed to render that period somewhat unfavourable to a deliberate examination of the very grave questions which the claims involve.

"The attention of this Government was, during the same period, largely engrossed by questions at home or abroad of peculiar interest and urgency. The British Government has seemed to us to have been similarly engaged. These circumstances have now passed away, and a time has arrived when it is believed that the subject may receive just attention in both countries.

"The principles upon which the claims are asserted by the United States have been explained by yourself in an elaborate correspondence with Earl Russell and Lord Clarendon. In this respect, there seems to be no deficiency to be supplied by this Department. Thus if it should be the pleasure of Her Majesty's Government to revert to the subject in a friendly spirit, the materials for any new discussion on your part will be found in the records of your Legation, properly and duly

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prepared for use by your own hand. It is the President's desire that you now call the attention of Lord Stanley to the claims in a respectful, but earnest manner, and inform him that, in the President's judgment, a settlement of them has become urgently necessary to a re-establishment of entirely friendly relations between the United States and Great Britain.

"This Government, while it thus insists upon these particular claims, is neither desirous nor willing to assume an attitude unkind or unconciliatory towards Great Britain. If on her part there are claims, either of a commercial character, or of boundary, or of commercial or judicial regulation, which Her Majesty's Government esteem important to bring under examination at the present time, the United States would, in such case, be not unwilling to take them into consideration in connection with the claims which are now presented on their part, and with a view to remove at one time, and by one comprehensive settlement, all existing causes of misunderstanding.

* * * * *

"The claims upon which we insist are of large amount. They affect the interest of many thousand citizens of the United States in various parts of the Republic. The justice of the claims is sustained by the universal sentiment of the people of the United States. Her Majesty's Government, we think, cannot reasonably expect that the Government of the United States can consent, under such circumstances, to forego their prosecution to some reasonable and satisfactory conclusion. This aspect of the case is, however, less serious than that which I have next to present. A disregard of the obligations of Treaties, and of international law, manifested by one State, so injurious to another as to awaken a general spirit of discontent and dissatisfaction among its people, is sure, sooner or later, to oblige that people, in a spirit of self-defence, if not of retaliation, in the absence of any other remedy, to conform their own principles and policy, in conducting their intercourse with the offending State, to that of the party from whom the injury proceeds.

* * * * *

"Her Majesty's Government, we think, cannot reasonably object to acknowledge our claims, and to adopt such measures as will assure the American people that their friendly policy of non-intervention in the domestic controversies of Great Britain will be made reciprocal and equal.

"I observe, finally, that the United States and Great Britain are two of the leading national Powers in this age. The events of the last five years have conclusively proved that harmony between them is indispensable to the welfare of each. That harmony has been, as we think, unnecessarily broken through the fault of Great Britain; nor does there exist the least probability that it can ever be completely renewed and restored unless the serious complaint which you are now again to bring to the notice of the British Government shall be amicably

and satisfactorily adjusted. Such an adjustment would be acceptable, we think, to the friends of peace, progress, and humanity throughout the world; while the benignant principles upon which it shall be based, being conformable to the law of nations, will constitute a guide for the conduct of commercial States in their mutual intercourse which will everywhere be conducive to internatianal peace, harmony, and concord.

"I am, &c.

(Signed) "WILLIAM H. SEWARD."

Inclosed in this despatch was "an abstract of the claims filed in the Department of State by American citizens, native and naturalized, for damages sustained by them as the owners, mariners, freighters, or insurers of duly documented American ships, captured and destroyed, or appropriated, by the officers and crew of the steamer *Alabama;* and as owners, insurers, or otherwise interested in the cargoes of such ships, or in charter-parties, for the services of such ships;" and like abstracts of claims for captures by the *Florida*, *Georgia*, and *Shenandoah*. The aggregate amount was a little less than 2,000,000*l.* sterling.

Lord Stanley to Sir F. Bruce.

(Extract.) "*Foreign Office, November* 30, 1866.

"It is impossible for Her Majesty's present advisers to abandon the ground which has been taken by former Governments, so far as to admit the liability of this country for the claims then and now put forward. They do not think that such liability has been established according to international law or usage; and though sincerely and earnestly desiring a good understanding with the United States, they cannot consent to purchase even the advantage of that good understanding by concessions which would at once involve a censure on their predecessors in power, and be an acknowledgment, in their view uncalled-for and unfounded, of wrong-doing on the part of the British Executive and Legislature. But, on the other hand, they are fully alive to the inconvenience which arises from the existence of unsettled claims of this character between two powerful and friendly Governments. They would be glad to settle this question, if they can do so consistently with justice and national self-respect; and with this view they will not be disinclined to adopt the principle of arbitration, provided that a fitting arbitrator can be found, and that an agreement can be come to as to the points to which arbitration shall apply.

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"Of these two conditions, the former need not be at present be discussed: the latter is at once the more important and the more pressing.

"With regard to the ground of complaint on which most stress is laid in Mr. Seward's despatch, viz., the alleged premature recognition of the Confederate States as a belligerent Power, it is clear that no reference to arbitration is possible. The act complained of, while it bears very remotely on the claims now in question, is one as to which every State must be held to be the sole judge of its duty; and there is, so far as I am aware, no precedent for any Government consenting to submit to the judgment of a foreign Power, or of an international Commission, the question whether its policy has or has not been suitable to the circumstances in which it was placed.

"The same objection, however, does not necessarily apply to other questions which may be at issue between the two Governments in reference to the late war; and with regard to these, subject to such reservations as it may hereafter be found necessary to make, I have to instruct you to ascertain from Mr. Seward whether the United States' Government will be prepared to accept the principle of arbitration, as proposed above. Should this offer be agreed to, it will be for Mr. Seward to state what are the precise points which, in his opinion, may be, and ought to be, so dealt with. Any such proposal must necessarily be the subject of deliberate consideration on the part of Her Majesty's Government; but they will be prepared to entertain it in a friendly spirit, and with the sincere desire that its adoption may lead to a renewal of the good understanding formerly existing, and, as they hope, hereafter to exist, between Great Britain and the United States.

"I am, &c.

(Signed) "STANLEY."

Mr. Seward to Mr. Adams.

"*Department of State, Washington,*

(Extract) "*January* 12, 1867.

"With regard to the manner in which this protracted controversy shall be brought to an end, we agree entirely with the sentiments expressed by Lord Stanley. We should even think it better that it be brought to an end which might, perhaps, in some degree disappoint the parties, than that it should continue to alienate the two nations, each of which is powerful enough to injure the other deeply, while their maintenance of conflicting principles in regard to intervention would be a calamity to all nations. The United States think it not only easier but more desirable that Great Britain should acknowledge and satisfy the claims for indemnity which we have submitted, than it would be to find an equal and wise arbitrator who would consent to adjudicate them. If, however, Her Majesty's Government, for reasons satisfactory to them, should prefer the remedy of arbitration, the United States would

not object. The United States, in that case, would expect to refer the whole controversy just as it is found in the correspondence which has taken place between the two Governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side. They cannot consent to waive any question upon the consideration that it involves a point of national honour; and, on the other hand, they will not require that any question of national pride or honour shall be expressly ruled and determined as such. If Her Majesty's Government shall concur in these views, the President will be ready to treat concerning the choice of an umpire.

"I am, &c.

(Signed) "WILLIAM H. SEWARD."

Lord Stanley to Sir F. Bruce.

(Extract.) "*Foreign Office, March* 9, 1867.

"In my despatch of the 30th November I explained to you the grounds on which Her Majesty's Government could not consent to refer to a foreign Power to determine whether the policy of recognizing the Confederate States as a belligerent Power was or was not suitable to the circumstances of the time when that recognition was made, but I at the same time expressed the willingness of Her Majesty's Government to entertain in a friendly spirit any proposal which might be made to them by the Government of the United States, to refer to arbitration other questions which might be at issue between the two Governments in reference to the late war, and I desired you to invite Mr. Seward to state what were the precise points which in his opinion might be, and ought to be, so dealt with.

"Mr. Seward, in his despatch of the 12th of January, while suggesting that it would be 'not only easier but more desirable that Great Britain should acknowledge and satisfy the claims for indemnity which we have submitted, than it would be to find an equal and wise arbitrator who would consent to adjudicate them,' goes on to say that if Her Majesty's Government should prefer the remedy of arbitration, the United States would not object, but in that case 'would expect to refer the whole controversy just as it is found in the correspondence which has taken place between the two Governments, with such further evidence and arguments as either party may desire, without imposing restrictions, conditions, or limitations upon the umpire, and without waiving any principle or argument on either side.'

"To such an extensive and unlimited reference Her Majesty's Government cannot consent: for this reason, among others, that it would admit of, and indeed compel, the submission to the arbiter of the very question which I have already said they cannot agree to submit.

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"The real matter at issue between the two Governments, when kept apart from collateral considerations, is, whether, in the matters connected with the vessels out of whose depredations the claims of Americans citizens have arisen, the course pursued by the British Government and by those who acted under its authority was such as would involve a moral responsibility on the part of the British Government to make good, either in whole or in part, the losses of American citizens.

"This is a plain and simple question, easily to be considered by an arbiter, and admitting of solution without raising other and wider issues; and on this question Her Majesty's Government are fully prepared to go to arbitration, with the further provision that, if the decision of the arbiter is unfavourable to the British view, the examination of the several claims of citizens of the United States shall be referred to a Mixed Commission, with a view to the settlement of the sums to be paid on them.

"But as they consider it of great importance for the maintenance of good understanding between the two countries that the adjudication of this question in favour of one or other of the parties should not leave other questions of claims in which their respective subjects or citizens may be interested to be matter of further disagreement between the two countries, Her Majesty's Government, with a view to the common interest of both, think it necessary, as you have already apprised Mr. Seward in your letter of the 7th of January, 'in the event of an understanding being come to between the two Governments, as to the manner in which the special American claims' (which have formed the subject of the correspondence of which my present despatch is the sequel) 'should be dealt with, that, under a Convention to be separately but simultaneously concluded, the general claims of the subjects and citizens of the two countries arising out of the events of the late war should be submitted to a Mixed Commission, with a view to their eventual payment by the Government that may be judged responsible for them.'

"Such, then, is the proposal which Her Majesty's Government desire to submit to the Government of the United States—limited reference to arbitration in regard to the so-called *Alabama* claims, and adjudication by means of a Mixed Commission of general claims.

"You will read this despatch to Mr. Seward, and furnish him with a copy of it, as the deliberate reply of Her Majesty's Government to his despatch of the 12th of January, and in doing so, you will express to him the earnest hope of Her Majesty's Government that their present proposal will be accepted by the Cabinet of Washington in the spirit in which it is made.

"I am, &c.
(Signed) "STANLEY."

Lord Stanley to Sir F. Bruce.

"Sir, "*Foreign Office, May* 2, 1867.

"Mr. Adams has this day communicated to me the substance of a despatch which he had received from Mr. Seward in reply to the proposals which you were instructed by my despatch of the 9th of March to make on the subject of the claims arising out of the civil war in the United States.

"In this despatch Mr. Seward states that the Government of the United States adhere to the view which they formerly expressed as to the best way of dealing with these claims. They cannot, consequently, consent to a special and peculiar limitation of arbitrament in regard to the *Alabama* claims such as Her Majesty's Government suggests.

"They cannot give any preference to the *Alabama* claims over others in regard to the form of arbitrament suggested; and while they agree that all mutual claims which arose during the civil war between citizens and subjects of the two countries ought to be amicably and speedily adjusted, they must insist that they be adjusted by one and the same form of tribunal, with like and the same forms, and on principles common to all.

"The President of the United States, therefore, respectfully declines the proposal of Her Majesty's Government; but reciprocating the feelings of good-will which have been expressed on the part of Great Britain, the United States' Government will cheerfully receive any further suggestions that Her Majesty's Government may have to offer.

"I am, &c.
(Signed) "STANLEY."

Lord Stanley to Mr. Ford.

(Extract.) "*Foreign Office, November* 16, 1867.

"Whilst agreeing to this limited reference as regards the so-called *Alabama* claims, I have repeatedly stated that Her Majesty's Government could not consent to refer to a foreign Power to determine whether the policy of Her Majesty's Government in recognizing the Confederate States as belligerents was or was not suitable to the circumstances of the time when the negotiation took place. After referring, however, to the terms of my despatch of the 24th of May, Mr. Seward goes on to say that, in the view taken by the United States' Government, that Government would deem itself at liberty to insist before the arbiter that the actual proceedings and relations of the British Government, its officers, agents, and subjects, towards the United States in regard to the rebellion and the rebels as they occurred during that rebellion, are among the matters which are connected with

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the vessels whose depredations are complained of; just as, in the case of the general claims alluded to by me, the actual proceedings and relations of Her Majesty's Government, its officers, agents, and subjects in regard to the United States, in regard to the rebellion and the rebels, are necessarily connected with the transactions out of which those general claims arise.

"The language thus used by Mr. Seward appears to Her Majesty's Government to be open to the construction that it is the desire of the United States' Government that any tribunal to be agreed upon in dealing either with the so-called *Alabama* claims or with the 'general claims' might enter into the question whether the act of policy of Her Majesty's Government in recognizing the Confederate States as a belligerent Power was or was not suitable to the circumstances of the time when the recognition was made; a construction which, after the distinct and repeated avowal of Her Majesty's Government that they could not consent to a reference of such a question, Her Majesty's Government can hardly suppose that it was intended by Mr. Seward that the passage in his despatch should bear.

"But to prevent any misapprehension on this subject, Her Majesty's Government think it necessary distinctly to say, both as regards the so-called *Alabama* claims brought forward by citizens of the United States and as regards the general claims, that they cannot depart, directly or indirectly, from their refusal to 'refer to a foreign Power to determine whether the policy of recognizing the Confederate States as a belligerent Power was or was not suitable to the circumstances of the time when the negotiation was made.'

"As regards the so-called *Alabama* claims, the only point which Her Majesty's Government can consent to refer to the decision of an arbiter is the question of the moral responsibility of Her Majesty's Government, on the assumption that an actual state of war existed between the Government of the United States and the Confederate States; and on that assumption it would be for the arbiter to determine whether there had been any such failure on the part of the British Government as a neutral in the observance, legally or morally, of any duties or relations towards the Government of the United States as could be deemed to involve a moral responsibility on the part of the British Government to make good losses of American citizens caused by the *Alabama* and other vessels of the same class.

"As regards the general claims, the question of moral responsibility on the part of Her Majesty's Government does not, and cannot, come into dispute at all.

"Mr. Seward rightly supposes that Her Majesty's Government contemplated two tribunals for the adjudication, one of the *Alabama* claims, the other of the general claims; the one being, in the first instance, at all events, the tribunal of an arbiter, who would be called upon to pronounce on the principles of the moral responsibility of the British Government, and on the nature of whose decision would depend

the question of the appointment of a Mixed Commission for the examination in detail of the several claims of citizens of the United States to which that decision applied, namely, those arising out of the depredations of the *Alabama* and other similar vessels, and the adjudication of the sums payable in each case; the other, in its commencement and to its close, a purely Mixed Commission for the examination of the general claims of the subjects and citizens of both countries arising out of the war, and the adjudication of the sums payable by either country in each case.

"The distinction between the two classes of claims is clear: the one may never come before a Mixed Commission, and therefore may not require the assistance of an arbiter to decide differences of detail arising between the Commissioners; the other, though originally brought before a Mixed Commission, may possibly require the intervention of an arbiter in case of a difference of opinion among the members of the Commission which could not be otherwise reconciled, and for which case provision would be made in the ordinary way in the Convention for the Settlement of the Mixed Claims, by the insertion of Articles in regard to the selection of an arbiter.

"The functions of such an arbiter, as well as of an arbiter for a like purpose in the other Mixed Commission, for which provision would have to be made to meet the contingency of the so-called *Alabama* claims coming eventually under the cognizance of a Mixed Commission, would have nothing in common with the functions of the arbiter, to whom the question of principle involved in the last-mentioned class of claims would be referred.

"Her Majesty's Government cannot but apprehend that, if Mr. Seward really requires unrestricted arbitration as applicable to both classes of claims, and that the tribunal in both classes of cases should proceed upon the same principles and be clothed with the same powers, he has not fully considered the wide and inevitable distinction which exists between the classes; and in directing you to submit to the consideration of Mr. Seward the explanations and observations contained in this despatch, I have to instruct you to express the earnest hope of Her Majesty's Government that the Government of the United States will, on further reflection, accept without hesitation the proposal made in my despatches to Sir F. Bruce of the 9th of March and of the 24th of May, both of this year, namely, 'limited reference to arbitration in regard to the so-called *Alabama* claims,' and 'adjudication by means of a Mixed Commission of general claims.'

"You will furnish Mr. Seward with a copy of this despatch.

"I am, &c.

(Signed) "STANLEY."

Mr. Seward to Mr. Adams.

"*Department of State, Washington,*
"Sir, "*November* 29, 1867.

"The Government of the United States adheres to the views concerning the proposed arbitration which I have heretofore had occasion to make known, through your Legation, to Lord Stanley. We are now distinctly informed by Lord Stanley's letter that the limited reference of the so-called *Alabama* claims which Lord Stanley proposes is tendered upon the condition that the United States shall waive before the arbitrator the position they have constantly maintained from the beginning, namely, that the Queen's Proclamation of 1861, which accorded belligerent rights to insurgents against the authority of the United States, was not justified on any grounds, either of necessity or moral right, and, therefore, was an act of wrongful intervention, a departure from the obligation of existing Treaties, and without the sanction of the law of nations. The condition being inadmissible, the proposed limited reference is therefore declined.

"I am, &c.
(Signed) "WILLIAM H. SEWARD."

Here the subject dropped. But Mr. Reverdy Johnson, who succeeded Mr. Adams in 1868, as Minister of the United States in London, was instructed to re-open it with Lord Stanley, then Secretary of State for Foreign Affairs.[1] This he did at several interviews, first, by throwing out suggestions that Great Britain might dispose of the question by payment of a sum of money,

[1] *Extract from Mr. Reverdy Johnson's Instructions.—(Communicated to Lord Stanley by Mr. Reverdy Johnson, 16th October,* 1868.)

"Our conclusion is, that in the event that you become convinced that an arrangement of the Naturalization question which would be satisfactory to the United States, in view of your previous instructions, can be made, then and in that case you may open concurrent negotiations upon the two questions first herein-named, to wit, San Juan and the Claims question; but that those two negotiations shall not be completed, or your proceedings therein be deemed obligatory, until after the Naturalization question shall have been satisfactorily settled by Treaty or by Law of Parliament."

A Protocol on the Naturalization question had been signed before Mr. Johnson began to treat on the "Claims" question, which these Instructions authorized him to do.

or by a cession of territory, and afterwards by proposing the outline of a Protocol or Convention, which Lord Stanley was willing to adopt. A draft of a Convention was drawn up accordingly. To this various objections were raised by the American Government; and in order to remove them it was thoroughly recast, so as to meet the wishes of Mr. Seward. On the 14th January, 1869, it was signed *sub spe rati* by Mr. Reverdy Johnson, and by Lord Stanley's successor the Earl of Clarendon, and was officially communicated by the President to the Senate of the United States for approval. On the 13th April (General Grant having in the meanwhile become President) it was resolved in the Senate, by a vote of 54 to 1, that the Senate "does not advise and consent to the ratification of the Convention."

I do not propose to enter into the details of this negotiation or of Mr. Johnson's Convention, nor shall I attempt to criticize the one or the other. The Convention, in substance, was a simple agreement to refer "all claims on the part of the subjects of Her Britannic Majesty upon the Government of the United States, and all claims on the part of the citizens of the United States upon the Government of Her Britannic Majesty, including the so-called *Alabama* claims," presented or to be presented between certain specified dates, to four Commissioners, two to be named by the Queen and two by the President of the United States, with a provision for umpirage; the Commissioners to sit at Washington, and to receive and peruse the official correspondence respecting any claims submitted to them, and also such further documents in writing as either Government might present, and to hear, if required, one person on each side.

"Nevertheless, if the Commissioners, or any two of them, shall think desirable that a Sovereign, or Head of a friendly State, should be Arbitrator or Umpire in case of any claim, the Commissioners shall report to that effect to their respective Governments, who shall there-

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upon, within six months, agree upon some Sovereign or Head of a friendly State, who shall be invited to decide upon such claim, and before whom shall be laid the official correspondence which has taken place between the two Governments, and the other written documents or statements which may have been presented to the Commissioners in respect of such claims."[1]

That the American Government—that is, the President acting by the advice and with the consent of the Senate—had a right to decline to ratify the Convention, will be disputed by no one. This right belongs to every Sovereign, and may be exercised for any reason that he judges to be of sufficient importance, even though the negotiator have not exceeded his powers or transgressed his instructions. So important is it that the neutral engagements of nations should be contracted deliberately, that there should be opportunity for reconsideration, and that the assent of each should be perfectly free.

The reasons for which the ratification was withheld in this case were explained in Mr. Fish's despatch of the 25th September, 1869. Though somewhat vaguely stated, they cannot certainly be described as light or trivial: they express, on the contrary, a view of the question at issue so widely different from

[1] Nothing is here said about the question of recognition. The British Government had not only refused several times distinctly and positively to suffer this question to be raised before an arbitrator, but had repeated this, through Lord Stanley, to Mr. Johnson himself:—

"In this conversation (21st October, 1868) little was said as to the point on which the former negotiations broke off, viz., the claim made by the United States' Government to raise before the arbiter the question of the alleged premature recognition by Her Majesty's Government of the Confederates as belligerents. I stated to Mr. Reverdy Johnson that we could not on this point depart from the position which we had taken up, but I saw no impossibility in so framing the reference as that, by mutual consent, either tacit or express, the difficulty might be avoided."—*Lord Stanley to Mr. Thornton*, 21st October, 1868.

It must be assumed that the Queen's Government did not intend to abandon this resolution by acquiescing in the use of general words, nor the Government of the United States to overreach Great Britain by a trick of expression.

that which appears to have governed the framing of the Convention that they were not only sufficient to warrant the rejection of it, but appear likely to oppose considerable obstacles to the conclusion of any other. There is certainly not the slightest reluctance in this country to make any reasonable amends to the United States, could we but convince ourselves that reparation is justly due. Were we satisfied of that, I am persuaded that no punctilious sense of national dignity or honour would be suffered to forbid the frank acknowledgment of a past error. But the estimate which the American Government has thought fit to adopt of its own claims, and of the questions to be submitted to an arbitrator, is not favourable to a settlement. To say truth, it is such as almost to preclude discussion.[1]

[1] "The Claims Convention, Mr. Motley said, had been published prematurely owing to some accident which he could not explain, and that consequently long before it came under the notice of the Senate it had been unfavourably received by all classes and parties in the United States:—the time at which it was signed was thought most inopportune, as the late President and his Government were virtually out of office, and their successors could not be consulted on this grave question. The Convention was further objected to because it embraced only the claims of individuals, and had no reference to those of the two Governments on each other, and lastly, that it settled no question and laid down no principle."—*The Earl of Clarendon to Mr. Thornton*, 10th June, 1869.

"The President deems it due to the Senate, to himself, and to the subject, to declare that he concurs with the Senate in disapproving of that Convention. His own particular reasons for this conclusion are sufficiently apparent in this despatch. In addition to these general reasons, he thinks the provisions of the Convention were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress. Other and special reasons for the same conclusion have been explained in a previous despatch, such, namely, as the time and circumstances of the negotiation, the complex character of the proposed arbitration, its chance, agency, and results, and its failure to determine any principle, or otherwise to fix on a stable foundation the relations of the two Governments. The President is not yet prepared to pronounce on the

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Arbitration is a useful expedient when all that the parties require is an impartial judgment on their respective rights, and this can be given without laying down a general principle; or when the principle which it is necessary to lay down will be of no future importance to the litigants; or when the authority of the arbitrator is such that they are content to receive from him a principle which will be important to them hereafter. Where the decision will probably involve, or appear to involve, an important rule of conduct, on which the parties, or either of them, would not be willing to submit to the authority of the arbitrator, objections may reasonably be entertained to this mode of settlement. Further, where the decision will involve, or appear to involve, a principle of importance, it is material that the principle should be stated clearly, and, for this purpose, that the

question of the indemnities which he thinks due by Great Britain to individual citizens of the United States for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain.

"Nor is he now prepared to speak of the reparation which he thinks due by the British Government for the larger account of the vast national injuries it has inflicted on the United States.

"Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel cruisers, or by the supply of ships, arms, and munitions of war to the Confederates, or otherwise, in whatsoever manner.

"Nor does it fall within the scope of this despatch to discuss the important changes in the rules of public law, the desirableness of which has been demonstrated by the incidents of the last few years now under consideration; and which, in view of the maritime prominence of Great Britain and the United States, it would befit them to mature and propose to the other States of Christendom.

"All these are subjects of future consideration which, when the time for action shall come, the President will consider with sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honour of each, and to the promotion of future concord between them; to which end he will spare no efforts within the range of his supreme duty to the right and interests of the United States."—*Mr. Fish to Mr. Motley*, 25th September, 1869.

question which is to be submitted to the arbitrator should be stated clearly. Generally speaking, there are few classes of questions more suitable for arbitration than questions of alleged negligence or unintentional default. On the other hand, the question under what circumstances a Sovereign Government may issue a declaration of neutrality, is one on which few Sovereign Governments would be willing to bow to the decision of any arbitrator.

NOTE.

After the foregoing pages were in print, I have had the pleasure of reading a short dissertation, entitled *La Questione Anglo-Americana dell' Alabama dopo il Discorso del Senatore Sumner al Senato di Washington*, by Signor Pietro Esperson, Professor of International Law in the University of Pavia. It is chiefly devoted to a consideration of the question whether the recognition of the Confederates as belligerents was an injurious act, for the consequences of which Great Britain became responsible.

Professor Esperson lays down, in substance, the following propositions, and argues them one by one:—

Where revolt or rebellion has gone such a length as to establish within a country a *de facto* Government, confronting the old one and waging war against it, foreign nations are bound, by the respect due to national independence, to accept the facts as they exist, without inquiring whether the new Government has right on its side; to regard the contending parties as (for the purposes of the war) two independent societies; and to remain neutral.

These conditions existed in the United States, and foreign nations had no alternative but to recognize both parties as belligerents.

As there can be no war without two or more belligerents, to deny that character to one of the contending parties would have been to refuse it to the other.

The blockade of the South was, in respect of foreign nations, an exercise of the rights of war against neutrals, and President Lincoln's Proclamation of the 19th April, 1861, which announced the blockade, recognized the existence of a war.

Great Britain exercised a right, and may indeed be said to have fulfilled a duty, in recognizing the Confederates as belligerents. It is, therefore, absurd to contend that she is responsible for damages which the United States may have sustained, traceable directly or indirectly to the Queen's Proclamation. "*Come si può conciliare che chi*

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non è responsabile della causa debba poi rispondere degli effetti?" Even if it were true that the Confederates would never have sent privateers to sea, had they not been recognized as belligerents, this would not justify a claim for reparation; the recognition itself being a perfectly legitimate act.

Setting aside the case of the *Alabama*, the conduct of Great Britain was blameless in respect of both the contending parties ("*inoffensiva per ambe le parti contendenti*").

As regards the *Alabama*, Professor Esperson thinks that the British Government became responsible for the losses actually inflicted by that vessel. He will pardon me, however, for saying that on this subject, to which he devotes only a few lines, his information seems to be imperfect. He describes the *Alabama* as having been built, armed, and manned in British waters, under the eyes of the British Government, as having been wholly manned with British seamen, and afterwards received into British ports "with her prizes." And he says that in the Convention rejected by the American Senate the British Government admitted a violation of neutrality in this case, by consenting to refer to arbitration the amount ("*il calcolo*") of the losses sustained by merchants who suffered from the depredations of the *Alabama*. If he should do me the honour to read this book, he will find that these are very unlike the true facts of the case, and he may perhaps see reason to change his opinion on this point.

CHAPTER XVIII.

Conclusion.

My narrative is ended. I shall add to it only one or two short general observations. It is the misfortune of a writer who undertakes to treat of questions actually in dispute—especially if one of the countries interested in the dispute be his own—that he can scarcely assign to them himself, or expect that others will assign to them, the true measure of their permanent importance. It cannot, however, have escaped the reader's notice that some at least of the questions reviewed in these pages have an importance of their own, wider and more lasting than such as they derive from transient and accidental circumstances. Great Britain and the United States were not the only Powers really concerned in these controversies; still less can they be accounted the only Powers interested in whatever tends to alter, or to define with increased clearness, the rights and duties of belligerent and neutral.

The rights of belligerent and neutral, during the late contest, were brought into discussion, as we have seen, under peculiar circumstances. The contest itself was a civil war; a civil war developed with extraordinary celerity, because it sprang from the revolt of a cluster of communities already completely organized, and accustomed to union for the regulation of common interests and for military defence; a civil war waged on an unexampled scale, since the victorious party mustered at

Ch. XVIII. its close a fleet of more than 500 ships and an army of nearly 1,000,000 men. It was a war prosecuted by land and sea, in which the weaker combatant was an enterprising and audacious people, with plenty of naval officers and few ships, possessing an extensive sea-coast, which was harassed and gradually, but only gradually, closed by a most protracted blockade. The greatest maritime Power in the world, which is also the greatest workshop and mart for general trade, and therefore the most natural resort for procuring all kinds of supplies, was neutral, and separated from the strife only by the broad highway of the Atlantic. Lastly, it should not pass unobserved that steam-power and the changes introduced by it into the art of navigation have insensibly altered in various ways the conditions under which war is carried on, and have been found to affect, to a degree not fully understood before, the facilities for enforcing and for eluding blockades, for the carriage of contraband, for procuring and fitting-out ships, for harassing an enemy's commerce, and for cruising in distant seas.

Questions, therefore, not new in themselves assumed new aspects in the late war. To the difficulty which belligerent and neutral commonly find in looking at the same facts from one and the same point of view was added the more obstinate difficulty which is likely to arise when the belligerent is a citizen fighting against his fellow-citizen, or a Sovereign at war with his subjects. The points of view from which such a struggle is regarded by the neutral and by the belligerent Sovereign are not, it is true, really irreconcilable; on the contrary, they are quite consistent with one another. A rebel is liable to be treated as a criminal within the jurisdiction of his Sovereign, outside of it he is not liable to be so treated; and to insist that he shall be regarded as a criminal abroad is as unreasonable in the Sovereign as it would be in the neutral to contend that he should not be so regarded at home. But although there is no

contradiction in reason and logic, the difficulty exists nevertheless; and it was never more strikingly illustrated than by the experience of the late war.

There is no part of the policy of the United States on which American Presidents have dwelt with greater complacency than the attitude which the Republic has held towards countries struggling with revolt or torn by internal wars. In defining this they have been careful to draw a line between the acts of the Government and the sympathies of the people. A struggle for independence—or, which is exactly the same thing, a revolt—has always been deemed in America a natural and legitimate object of popular sympathy. American Governments have avowed this; they have sometimes permitted themselves not only to share the feeling, but to give public expression to it; but they have endeavoured, not always with success, to prevent it from taking the form of active interference, and in their own public acts they have prided themselves in maintaining a perfectly impartial neutrality. Whether a Government was sovereign, whether a people was independent, were, and must always be, to the Government of the United States, questions of fact, to be determined "without any reference to the merits of the original controversy." In the meantime, "when civil war breaks the bonds of society and of government, or at least suspends their force and effect, it gives birth in the nation to two independent parties, who regard each other as enemies and acknowledge no common judge. It is of necessity, therefore, that these two parties should be considered by foreign States as two distinct and independent nations."[1] The principles and policy thus recognized by the United States have been declared "appropriate to their condition, fixed and fastened upon them by their character, their history, and their position among the

[1] *Report of Committee of the House of Representatives on Foreign Relations*, 19th March, 1822.

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nations of the world;" and these principles, said an American Secretary of State, "will not be departed from until some extraordinary change shall take place in the general current of human affairs."[1]

We have now seen how painful and difficult it may be for a nation to submit its own feelings and interests to a rule which seems just and expedient when applied to others. To Americans of the North and West it has appeared a thing not to be borne that a civil war, originating in a revolt which they thought unjustifiable and criminal, should be dealt with by foreign Governments on exactly the same principles as if it had been clearly justifiable: in other words, that these Governments should treat it "without reference to the merits of the original controversy," simply as a civil war. This impatience coloured their whole view of the subject, and the treatment of every question as it arose: it speaks in every despatch, and points every argument. The nations of Europe had been asked—they had been importuned—to be neutral; no sooner did they begin to act as neutrals and treat both belligerents alike, than they were overwhelmed with reproaches, and their conduct was persistently judged with reference, not to the rights and

[1] See the correspondence between Mr. Webster and M. Hülsemann in 1850, on the proceedings of President Taylor's Government in reference to the insurrection in Hungary. If the United States had formally recognized the independence of Hungary, though no benefit would have resulted from it to either party, it would not, said Mr. Webster, have been an act against the law of nations, provided they took no part in her contest with Austria.

Pando (*Elementos del Derecho Internacional*, 1838, p. 589), after quoting the judgments delivered by the Supreme Court in the *Divina Pastora* and the *Nuestra Señora de la Caridad*, observes:—

"Esta misma doctrina ha sido recientemente aplicada por los Estados-Unidos á los insurgentes de Tejas contra autoridad de su protegida la República Mejicana. *Falta ver si la Union aprobará estos principios en el futuro caso de que los profesen las Potencias extrangeras, cuando estalle alguna guerra civil entre los miembros de la misma Federacion.*"

duties of neutrals, but to the legal and moral obligations which the people of the revolted States owed to the Union. The Confederates were "disloyal citizens," "insurgents," "rebels;" to receive them into neutral ports was to harbour rebels; to sell them guns and ammunition, or even to send them calicoes or French brandy, was to furnish supplies to rebels; to trade with blockaded ports was to assist rebellion. Rebels and disloyal they unquestionably and avowedly were, since they were in arms, not merely to subvert the Government under which they lived, but to make themselves independent of it; and he who does this carries rebellion and disloyalty to the extreme. But in the view of the Governments of Europe these rebellious and disloyal communities were merely large masses of people engaged in war, and both reason and usage justified those Governments in so regarding them. The Government of the United States was not bound to treat its revolted citizens as belligerents, but it was bound by its own history, by usage, and by reason, to know and acknowledge that they were belligerents, and that only, to Great Britain, to France, to the Netherlands, to Brazil, to Spain. And this was what it could never persuade itself to do.

It will have been observed also that the rights of war were asserted and enforced, with somewhat more than usual rigour, by a nation which has commonly been the advocate and champion of the interests of peace. American precedents in this war have carried belligerent rights a step or two further than they were carried even by Lord Stowell. It is by the United States that the doctrine of continuous voyages has been applied to the transportation of contraband, and to breaches of blockade. It is the Government of the United States which has asserted, rightly or wrongly, the claim of a belligerent to capture a neutral vessel conveying a diplomatic agent of the enemy from one

Ch. XVIII. neutral port to another. It is by the United States that the latest example has been afforded of the blockade of an immense range of sea-coast—a blockade rigorous and protracted, yet loose and imperfect, at least in its earlier stages. And, as if this were not enough, we have seen it made matter of complaint against a neutral Government, by the representative of the United States, that the enforcement of the blockade was left entirely to the vigilance of the belligerent, and that blockade-running was not prohibited by municipal law.

I do not recall these facts in order to throw blame on the American Government, but because they show how the point of view from which a State regards questions of international right and expediency may be affected by the situation in which it is placed, and how rapidly even cherished opinions may give way before a great and violent change of circumstances. The history of International Law is full of such variations and inconsistencies. We ourselves are not clear from them. Among the complaints urged by Mr. Seward and Mr. Adams there are some which seem but reproductions of those addressed by Lord Stormont and Sir Joseph Yorke to the French and Dutch Governments during the War of American Independence. And it would be easy to draw an effective contrast between the severity with which Great Britain formerly enforced the rights of belligerents, and the warmth with which she lately asserted the rights of neutrals.

It would argue a great want of candour and generosity, did we not unreservedly admit that there is no situation more painful and irritating than that of a people struggling with a great and formidable revolt. When foreign conquest hews away a province, it is a heavy misfortune, but it is the fortune of war. But the bitterness of a family quarrel, pushed to the last extremity and tearing sinew and fibre asunder, rouses the passions more effectually, and excites intenser

resentment and an acuter sense of wrong. The people of the States which adhered to the Union felt that they were fighting not for a province, or for half-a-dozen provinces, but for the grandeur, the security, the very existence of their country, for the many present advantages, and the almost illimitable expectations, which were the birthright of every American citizen. I wrote these words during the first year of the war; I write them over again now. We may try—and we ought, if we would be just to the Americans—to imagine their situation our own, and realize the feelings it would inspire. But to do this completely is beyond the power of any one: we cannot do it, try as we will. An almost unbounded allowance is to be made for a people surrounded by circumstances so likely to make them over-sensitive, impatient, and exacting. But this does not make unreasonable pretensions just; and it does not warrant or excuse the revival, in a more extravagant form, after five years of profound peace, of complaints and demands which were unjust when originally urged during the strife and fever of the war.

Is it a just inference that general rules of international conduct are practically useless, being so liable as we see they are to be disturbed and shaken by transitory causes, to be trampled underfoot in the heat of passion, or disregarded at the solicitation of temporary interest? No; the conclusion is the other way. General rules are the only security we have against a perpetual conflict of opposing interests; the only security that every question, as it arises, shall not be decided according to the will of the most powerful or the most eager of the parties concerned, and that the solution which on the whole is most for the advantage of all nations shall prevail over that which happens at the time to be most for the advantage of any one particular nation. And we see that they really effect that object to a great degree;

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that they really furnish a common standard for the adjustment of disputes, which is useful, though the application of it may be and often is vehemently contested; and that after every transient disturbance they regain their force. In every one of the controversies which we have reviewed the litigants had much common ground: a general principle was admitted, and the quarrel was about the limits and application of the principle: the field of dispute is thus conveniently narrowed, and the number of disputes greatly diminished. The protection of neutral trade in war against the encroachments of rude force, and of the sovereign rights of the lesser Powers against the greater, is ordinarily due to general rules, and to the interest which nations generally have in sustaining them. It is of the highest consequence, therefore, that such rules should be steadily asserted and firmly defended; and it is for the advantage of the world that there should always be Powers able and willing to assert and defend them.

The judgment to be passed on the conduct of Great Britain depends on the answers which may be given to two plain and simple questions. Was her Government right in resolving to be neutral? Was its neutrality sincere in intention, and enforced with reasonable care? On the first of these there is really little room for difference of opinion. As to the second, the reader, who has patiently travelled through this history, will decide for himself whether it be not, as I think it is, that of an honest neutrality, steadily and on the whole efficiently maintained, under circumstances of no common difficulty.

The difficulties, such as they were, with which the Government of Great Britain had to contend, lie for the most part on the surface of this narrative, and call for no particular explanation. But I may be permitted to say, in conclusion, that the peace and mutual regard of these two countries appears to be too often endangered

by the very circumstances which knit them so closely together. They are so nearly allied by blood, by language, and by a common literature—their habits of political thought and action, though differing in many ways, are so much alike—their intercourse is so constant, that any trivial cause of offence between them is apt to be magnified, and every trait of unfriendliness to be resented as coming from those who are—

"A little more than kin, and less than kind."

But they are also free countries, and full of political activity: accustomed to freedom of speech, they are free-spoken; and opinion expresses itself in each of them with little restraint and little regard to remote consequences. From several causes, on which I need not dwell, this is the case in America more than it is the case in England. Yet Americans are at the same time far more keenly sensitive to what we say of them than we are to what they say of us. In truth, it is not too much to affirm that, did the annals of our Parliament reflect in this respect those of Congress, and did public speakers and writers in England indulge in the same freedoms as they do in America, there would be a rancour between the two countries which would make the preservation of peace well nigh impossible. During the civil war the ample license of expression which all men enjoy in England caused, I fear, some pain and irritation in the United States; for feelings always sensitive become morbidly acute in the heated atmosphere of civil war. By many persons in England the cause of the Union was regarded with no friendly eye, and the extent of this sentiment was grossly and inexcusably exaggerated in America. These exaggerations are still current, and these feelings have not yet ceased to rankle. I know not whether it is chimerical to hope that we may learn in time to be more considerate towards one another. But this at any rate is clear, that the public responsibilities of nations are

Ch. XVIII. those of the Governments which rule them; that the Government of a free people cannot be held accountable for the opinions or sentiments of its subjects; and that the only real remedy for such wounds as these is to be sought in mutual forbearance, in candour, moderation, and self-control.

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