



SUPPLEMENT

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Foreign Office, December 24, 1869.

CORRESPONDENCE with United States' Minister at Washington:—

(No. 1.)

The Earl of Clarendon to Mr. Thornton.

SIR, *Foreign Office, June 10th, 1869.*

ON the day of Mr. Motley's arrival in London, on the 31st of May, he requested to see me unofficially at my private residence. At the interview which took place on the following day, the conversation was general, and Mr. Motley said that he preferred not to enter upon matters of business, as his instructions had only been delivered to him when he was on the point of embarkation at New York, and he had not yet had time sufficiently to consider them.

I assented of course to the postponement desired by Mr. Motley.

His tone was very friendly, and we met as old acquaintances.

Mr. Motley called upon me this morning by appointment, and said that as he had now been in London some days, his Government would be desirous to hear from him, and he wished therefore to make known to me the general tenor of his instructions, which were of a most amicable character, and he had no hesitation in assuring me that the wish of the President and Government of the United States was, that existing differences between the two countries should be honourably settled, and that the international relations should be placed on a firm and satisfactory basis.

I assured Mr. Motley of the perfect reciprocity of feeling that existed on the part of Her Majesty's Government.

Mr. Motley then proceeded to say that he was empowered to conclude a Treaty on the Naturalization question upon the principle recorded in the Protocol signed by Lord Stanley and Mr. Reverdy Johnson, and I expressed my fear that some delay must take place in this matter, not from any unwillingness on the part of Her Majesty's Government to settle the question, but from the great pressure of business now before Parliament which would make it almost impossible to pass a Bill in the course of the present Session which affected such various interests, and was certain to lead to protracted discussion. The delay, however, was not likely, I thought, to be of such importance to the Government of the United States, as their main object, viz., the renunciation of our old doctrine of indefeasible allegiance had been achieved by the Protocol, with the general approbation, to the best of my belief, of the British public.

Mr. Motley said that in the recent short Session of the Senate, there had not been time to take action on the San Juan Convention, and that its consideration had been postponed without any objection to it having been raised.

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.

These were the chief reasons which had led to its rejection by the Senate, and Mr. Motley added that although they had not been at once and explicitly stated, no discourtesy to Her Majesty's Government was thereby intended. Mr. Motley then proceeded to say that in the present state of excitement which existed in both countries, his Government was of opinion that to reopen the question would be inexpedient, as it could not be approached with the calm deliberation which was essential to its satisfactory solution, and he wished therefore to defer discussion on the subject.

I said that Her Majesty's Government would have no difficulty in complying with the wishes of the United States' Government in this respect, though I did not consider that the excitement to which he had alluded was great in this country, but I thought it would be very objectionable indefinitely to postpone a settlement, and to treat the matter as a quarrel held in suspension, to be revived only when circumstances might make it the interest of either party to do so.

Mr. Motley assured me that I need be under no such apprehension, as his Government merely desired, for the reasons he had just stated, that a definite time should be allowed for angry feelings to subside. Mr. Motley laid great stress upon the opportunity that would be afforded to two great maritime nations like England and the United States to lay down some general principles of international law, particularly with reference to the rights and duties of neutrals in war, that might be of advantage to the civilized world.

I said I could give no better proof of the readiness of Her Majesty's Government to meet that of the United States on this ground than the fact that I had myself made a somewhat similar proposal to Mr. Adams (as might be seen in the papers laid before Parliament), who, however, had shown no disposition to entertain it.

Mr. Motley said that his Government did not question the right of England or any other country to confer belligerent rights, but that the Government which acted in that manner must do so at its own risk and responsibility; and upon his proceeding to make some further remarks on the subject, I took the liberty of observing that although I was quite prepared to defend the conduct of Her Majesty's Government, and the complete and honest neutrality it had observed throughout the war, yet if discussion was not to take place at present, I thought it desirable not to enter upon such matters.

Mr. Motley, in a friendly manner, agreed that it would be the better course. Mr. Motley entered at some length upon the responsibility weighing upon men who were charged with the maintenance of friendly relations between Great Britain and the United States, and said he did not disguise from himself the difficulty of replacing them on a sound and equitable footing, as in regulating international affairs, passions and sentiments must be taken into consideration, and intense feeling with regard to the questions at issue between the two countries existed in the United States.

I assured Mr. Motley that my earnest desire, as representing Her Majesty's Government, would be to co-operate with him in effecting a settlement of existing differences in a manner

honourable to both countries, and he must be well aware that war with the United States would be abhorrent to the feelings of the English people.

I have, &c.,
(Signed) CLARENDON.

(No. 2.)

SIR, *Foreign Office, October 15, 1869.*

AS I am apprehensive that in reporting from memory to my colleagues I might not do justice to the long and important despatch which you read to me this afternoon, I should be much obliged to you if you would have the goodness to furnish me with a copy of it.

I have, &c.,
(Signed) CLARENDON.

(No. 3.)

Mr. Motley to the Earl of Clarendon.—(Received October 18.)

Legation of The United States, London, October 16, 1869.

MY LORD,
I HAVE the honour to transmit herewith, in compliance with the request contained in your note of the 15th instant, a copy of the despatch from the Secretary of State of the United States, which I read to your Lordship yesterday.

Renewing, &c.
JOHN LOTHROP MOTLEY.

(Inclosure.)

Mr. Fish to Mr. Motley.

Department of State Washington, September 25, 1869.

SIR,
WHEN you left here upon your mission the moment was thought not to be the most hopeful to enter upon renewed discussion or negotiation with the Government of Great Britain on the subject of the claims of this Government against that of Her Majesty, and you were instructed to convey to Lord Clarendon the opinion of the President that a suspension of the discussion for a short period might allow the subsidence of any excitement or irritation growing out of events then recent, and might enable the two Governments to approach more readily to a solution of their differences.

You have informed me that Lord Clarendon saw no objection to this course, and agreed with you that it would be well to give time for emotions which had been excited of late, to subside. The President is inclined to believe that sufficient time may have now elapsed to allow subsidence of those emotions, and that thus it may be opportune and convenient at the present conjuncture to place in your hands, for appropriate use, a dispassionate exposition of the just causes of complaint of the Government of the United States against that of Great Britain.

In order to do this in a satisfactory manner, it is necessary to go back to the very beginning of the acts and events which have, in their progress and consummation, so much disturbed the otherwise amicable relations of the two Governments.

When, in the winter of 1860 and 1861, certain States of the American Union undertook, by ordinances of secession, to separate themselves from the others, and to constitute of their own volition, and by force, a new and independent

Republic under the name of the Confederate States of America, there existed, as between Great Britain and the United States a condition of profound peace; their political relations were professedly and apparently of the most friendly character, and their commercial and financial relations were as close and intimate, in fact, as they seemed to be cordial in spirit, such as became the two great liberal, progressive, and maritime and commercial Powers of the world, associated as they were by strong ties of common interest, language and tradition.

The Government of the United States had no reason to presume that the amicable sentiments of the British Government would be diminished or otherwise prejudicially affected by the occurrence of domestic insurrection within the United States any more than those of the latter had been impaired by the occurrence of insurrection in British India, or might be impaired by such occurrences elsewhere in the dominions of Great Britain.

Least of all could the Government of the United States anticipate hostility towards it, and special friendship for the insurgents of the seceding States, in view of the inducements and objects of that insurrection, which avowedly, and as every statesman, whether in Europe or America, well knew, and as the very earliest mention of the insurrection in the House of Commons indicated, were the secure establishment of a perpetual and exclusive slave-holding Republic. In such a contest, the Government of the United States was entitled to expect the earnest good-will, sympathy, and moral support of Great Britain.

It was with painful astonishment, therefore, that the United States' Government received information of the decision of Her Majesty's Government which had already been made on the 6th day of May, 1861, and was announced on that day in the House of Commons by her Ministry, and was followed by the issue, on the 13th of May, 1861, of a Proclamation which in effect recognized the insurgents as a belligerent Power, and raised them to the same level of neutral right with the United States.

The President does not deny, on the contrary he maintains, that every sovereign Power decides for itself, on its responsibility, the question whether or not it will at a given time accord the status of belligerency to the insurgent subjects of another Power, as also the larger question of the independence of such subjects, and their accession to the family of sovereign States.

But the rightfulness of such an act depends on the occasion and the circumstances; and it is an act, like the sovereign act of war, which the morality of the public law and practice requires should be deliberate, seasonable, and just, in reference to surrounding facts; national belligerency, indeed, like national independence, being but an existing fact, officially recognized as such, without which such a declaration is only the indirect manifestation of a particular line of policy.

The precipitancy of the declaration of the Queen's Government, or, as Mr. Bright characterized it, "the remarkable celerity, undue and unfriendly haste," with which it was made, appears in its having been determined on the 6th of May, four days prior to the arrival in London of any official knowledge of the President's Proclamation of the 19th of April, 1861, by reference to which the Queen's Proclamation has since been defended, and that it was actually signed on the 13th of May, the very day of the arrival of Mr. Adams, the new American Minister; as if in the particular aim of forestalling and

preventing explanations on the part of the United States.

The prematureness of the measure is further shown by the very tenor of the Proclamation, which sets forth its own reason, namely, "Whereas hostilities have unhappily commenced between the Government of the United States of America, and certain States styling themselves the Confederate States of America." Moreover, it is not pretended by the Proclamation that war exists, but only a "contest," in reference to which it is not unimportant to note that the language used is such as would fitly apply to parties wholly independent one of the other, so as thus to negative, or to suppress at least, the critical circumstance that this bare commencement of hostilities,—this incipient contest,—was a mere domestic act of insurrection within the United States.

But that which conclusively shows the unseasonable precipitancy of the measure is the fact that on that day, May 13, 1861, and indeed until long afterwards, not a battle had been fought between the insurgents and the United States, nor a combat even, save the solitary and isolated attack on Fort Sumter. Did such a bare commencement of hostilities constitute belligerency? Plainly not.

There was at that time no such thing as a population elevated into force, and by the prosecution of war, which Mr. Canning points out as the test of belligerent condition. 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 the Queen'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; and that belligerency, so far as it was maritime, proceeding from the ports of Great Britain and her dependencies alone, with aid and co-operation of subjects of Great Britain.

The Government of the United States, that of Great Britain, and other European Powers, had repeatedly had occasion to consider this question in all its bearings.

It was perceived that the recognition of belligerency on the part of insurgents, although not so serious an act as the recognition of independence, yet might well be prejudicial to the legitimate Government, and therefore be regarded by it as an act of unfriendliness. It was a step, therefore, to be taken with thoughtfulness, and with due regard to exigent circumstances. Governments had waited months, sometimes years, in the face of actual hostilities without taking this step.

But circumstances might arise to call for it. A ship of the insurgents might appear in the port of the neutral, or a collision might occur at sea, imposing on the neutral the necessity to act. Or actual hostilities might have continued to rage in the theatre of insurgent war; combat after combat might have been fought for such a period of time; a mass of men may have engaged in actual war until they should have acquired the consistency of military power—to repeat the idea of Mr. Canning—so as evidently to constitute the fact of belligerency, and to justify the recognition by the neutral. Or, the nearness of the seat of hostilities to the neutral may compel the latter to act. In either of these contingencies, the neutral would have a right to act; it might be his sove-

reign duty to act, however inconvenient such action should be to the legitimate Government.

There was no such fact of necessity, no such fact of continued and flagrant hostilities, to justify the action of Great Britain in the present case. Hence the United States felt constrained at the time to regard this proclamation as the sign of a purpose of unfriendliness to them, and of friendliness to the insurgents, which purpose could not fail to aggravate all the evils of the pending contest, to strengthen the insurgents, and to embarrass the legitimate Government. And so it proved; for 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, dispatched to sea, and not seldom in name still professedly owned in Great Britain. Earl Russell truly said, "It so happens that in this conflict the Confederates have no ports except those of the Mersey and the Clyde, from which they send out ships to cruise against the Federals." The number of our ships thus directly destroyed amounts to nearly two hundred, and the value of property destroyed to many millions. Indirectly the effect was to increase the rate of insurance in the United States, to diminish exports and imports, and otherwise obstruct domestic industry and production, and to take away from the United States its immense foreign commerce, and to transfer this to the merchant-vessels of Great Britain. So that while in the year 1860 the foreign merchant tonnage of the United States amounted to 2,546,237 tons, in 1866 it had sunk to 1,492,923 tons. This depreciation is represented by a corresponding increase in the tonnage of Great Britain during the same period to the amount of 1,120,650 tons. And the amount of commerce abstracted from the United States and transferred to Great Britain during the same period is in still greater proportion. Thus, in effect, war against the United States was carried on from the ports of Great Britain by British subjects in the name of the Confederates. Mr. Cobden, in the House of Commons, characterized by these very words the acts permitted or suffered by the British Government: "You have been carrying on war from these shores against the United States," he said, "and have been inflicting an amount of damage on that country greater than would have been produced by many ordinary wars."

The gravity of these facts may be appreciated by considering what had happened at other

periods. In the latter period of the war of the French Revolution, Great Britain was compelled to strain every nerve to maintain herself against the power of Napoleon. In such straits, by a sort of war in disguise, she trespassed on the rights of neutrals, with special prejudice of the United States, to the result at length of solemn war between the two nations. But neither in the events which preceded that war, nor in the events of the war itself, did the United States suffer more at the hands of Great Britain than we did during the late rebellion, by the aid, direct or indirect, which she afforded to the Confederate insurgent States. For while, on the ocean, our merchant marine was destroyed by cruisers sent out from Great Britain, and our military marine was mainly occupied in watching and counterworking blockade-runners fitted out in Great Britain by official agents of the insurgents, on the land it was, in like manner, the munitions of war and the wealth drawn by the insurgents from Great Britain which enabled them to withstand, year after year, the arms of the United States.

In the midst of all this, remonstrances of the Government of the United States were prompt, earnest, and persistent. Our Minister in London appealed to the international amity of the British Government; he called on it to discharge its obligations of neutrality, he invoked the aid of the municipal law of Great Britain.

Ample proofs of the wrong committed were submitted to the Queen's Government. Indeed, these wrongs were open, notorious, perpetrated in the face of day, the subject of debate and of boast even, in the House of Commons.

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 unminful of its international obligations, and suffered ship after ship to be constructed in its ports to wage war on the United States.

We hold that the international duty of the Queen's Government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign Power. The municipal law was but a means of repressing or punishing individual wrong-doers; the law of nations was the true and proper rule of duty for the Government. If the municipal laws were defective that was a domestic inconvenience, of concern only to the local Government, and for it to remedy or not by suitable legislation, as it pleased. But no sovereign Power can rightfully plead the defects of its own domestic penal statutes as justification or extenuation of an international wrong done to another sovereign Power.

When the defects of the 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.

The United States, at an early day in their history, had set the example of repressing violations of neutrality to the prejudice of Great

Britain, by their own authority, and in the discharge of their own national duty, without waiting for the assistance of municipal statute. They afterwards enacted such statutes for their own convenience, and as attestation of their good faith towards other nations. And on special occasions, where defects were perceived in such laws, we enacted new ones to meet the case, not deeming that such legislation was derogatory to our public dignity, but, on the contrary, conceiving that in so doing we best consulted the highest dictates of national dignity, self-respect, and public honour; and, if Great Britain had so understood her national duty on this occasion, she would have done much to save the two countries from the present controversy, and all its possible consequences.

Once before in its intercourse with the United States the Queen's Government had fallen into the error of assuming that municipal laws constitute the measure of international rights and obligations; that is to say, when official agents of the British Government attempted to enlist military recruits in the neutral countries of Prussia, the United States, and elsewhere, for service against Russia, on the hypothesis that, if the prohibitions of municipal law could be evaded, that would suffice, overlooking the paramount consideration of the respect due to the sovereign rights of the neutral Power.

So 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.

Surely that was an imaginary difficulty; or if a real one, it presented the election between a serious complication of relations with the United States and the hazard of a legal conflict with John Laird and Charles Kuh Prioleau.

But the Government of the United States has never been able to see the force of this alleged difficulty. The common law of England is the common law of the United States. In both countries, and certainly in England, revenue seizures are made daily, and ships prevented from going to sea, on much less cause of suspicion than attached to the suspected ships of the Confederates.

In both countries, and not least in England, the previous order of the Government, or its subsequent approval, covers the acts of the subordinate officers. In both countries, or if not in England assuredly in the United States, under municipal laws in this behalf substantially the same, the Government finds no difficulty in arresting ships charged with actual or intended violation of the sovereign rights or neutral duties of the States.

Signal examples of this occur in the history of the United States. Thus, during the late war between Great Britain and Russia, on complaints with affidavits being filed by the British Consul at New York, charging that the barque "Maury" was being equipped there as a belligerent cruiser, and this on far less evidence than that which the American Consul at Liverpool exhibited against

the "Alabama," the barque "Maury" was arrested within an hour by telegraphic order from Washington. Other examples of the same decision and promptitude, in maintenance of the sovereign rights and discharge of the neutral duties of the United States, have occurred, as is well known, under both the last and the present Administrations.

Nay, at every period of our history the Government of the United States has not been content with preventing the departure of ships fitted out in violation of neutrality, and of putting a stop to military recruitments and expeditions of the same nature, but has further manifested its good faith and its respect for its own sovereignty and laws by prosecuting criminally the guilty parties. Examples of this occur in the early stages of the war of the French Revolution; on occasion of the insurrection of the Spanish-American Continental Provinces and of revolutionary movements in the Spanish-American Republics; and on various other occasions, including the existing insurrection in Cuba.

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 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 discussions 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, premitting 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.

It is impossible not to compare and contrast the conduct of the States General as regards Great Britain, on occasion of the revolt of the British Colonies, with that of Great Britain as regards the insurrection in the Southern States. No fleets were fitted out by America in the ports of the Netherlands to prey on the commerce of Great Britain. Only in a single instance did American cruisers have temporary harbourage in the Texel. Year after year the exports of munitions of war from the Netherlands were forbidden by the States General, the more completely to fulfil their duty of amity and neutrality towards Great Britain. But, nevertheless, Great Britain treated a declaration of neutrality by the States General, and the observance of that declaration, as a sufficient cause of war against the Netherlands. Prior to which, the British Government continually complained of the occasional supplies derived by the Colonies from the Island of St. Eustatius. How light in this respect would have been the burdens of the United States during the late insurrection, if British aid had been confined to a contraband commerce between the insurgents and the port of Nassau.

Not such is the complaint of the United States against Great Britain.

We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality, by means of the resources it drew from Great Britain. We complain that by reason of the imperfect discharge of its neutral duties on the part of the Queen's Government, Great Britain became the military, naval, and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant marine by British ships, manned by British seamen, armed with British guns, despatched from British dockyards, sheltered and harboured in British ports. We complain that, by reason of the policy and the acts of the Queen's Ministers, injury incalculable was inflicted on the United States.

Nevertheless, the United States manfully and resolutely encountered all the great perils and difficulties of the situation, foreign and domestic, and overcame them. We endured with proud patience the manifestation of hostility there, where we had expected friendship, in England, the protagonist of the abolition of negro servitude, in order to perpetuate which the Southern States had seceded from the Union. We entered

on a great war, involving sea and land; we marched to the field hundreds of thousands of soldiers, and expended thousands of millions of treasure for their support; we lavished the blood of our bravest and best in battle as if it were but water; we submitted to all privations without a murmur; we staked our lives, our fortunes, and our honour, on the issue of the combat; and by the blessing of God we came out of the deadly struggle victorious, and with courage proved, strength unimpaired, power augmented, and our place fixed among the nations, second to none, we may without presumption say, in the civilized world. Providence had smiled on our sacrifices and our exertions; and in the hour of our supreme triumph we felt that, while mindful of good-will shown us by friendly Powers in the hour of trial, we could afford to account in moderation with others, which like Great Britain, had, as we thought, speculated improvidently, and to their own discomforture, on the expected dismemberment and downfall of the great American Republic.

As to Great Britain, we had special and peculiar causes of grief. She had prematurely, as we deemed it, and without adequate reason, awarded the status of belligerency to our insurgents. But this act of itself, and by its inherent nature, was of neutral colour, and an act which, however we might condemn it in the particular case, we could not deny to be of the competency of a sovereign State. Other European Governments also recognized the belligerency of the insurgents. But Great Britain alone had translated a measure, indefinite of itself, into one of definite wrong to the United States, as evinced by the constant and efficient aid in ships and munitions of war which she furnished the Confederates, and in the permission or negligence which enabled Confederate cruisers from her ports to prey on the commerce of the United States. Great Britain alone had founded on that recognition a systematic maritime war against the United States; and this to effect the establishment of a Slave Government! As to which, Mr. Bright might well say: "We supply the ships; we supply the arms, the munitions of war; we give aid and comfort to the foulest of crimes: Englishmen only do it." Thus 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.

We reflected that the Confederates had no ships, no means of building ships, no mechanical appliances, no marine, no legal status on the sea, no open seaports, no possible Courts of Prize, no domestic command of the instruments and agencies of modern maritime warfare; we asked ourselves what would the Queen's Government have said if the United States had awarded the rights of belligerency to insurgents in India or in Ireland in the same circumstances, that is, on the occurrence of a single act of rebel hostility, and had bestowed upon them their only means of maritime as well as territorial warfare against Great Britain?

In truth, while in the hour of their great triumph, the United States were thankfully inclined to sentiments of moderation, both at home and abroad, for at home no man has suffered death for political causes, we were the more uninclined to moderation, especially as regards Great Britain, in view of the very enormity of the wrongs we had sustained, and the consequent difficulty of measuring the reparation due, even if sincerely proffered by the Queen's Govern-

ment. We desired no war with England; we shrank from the thought of another lustrum of fratricidal carnage like that through which we had just passed, with no change in the conditions of war, but the substitution on one side of misguided Englishmen in the place of misguided Americans. We preferred, if possible, to find some satisfaction of our great grievances by peaceful means, consistent alike with the honour of Great Britain and the United States.

The influence of this condition of mind is apparent in all the discussions of the subject by or under the instructions of this Department during preceding Administrations of the Government.

It resulted in earnest efforts on our part to determine the controversy by arbitration in the interest of peace and of international good-will, which efforts, if promptly met by the Queen's Ministers in the spirit in which they were made, would long since have removed the present controversy from the field of diplomacy, and effectually harmonized the relations of the United States with Great Britain.

But the amicable advances of the United States to dispose of the question by arbitration were, at the start, and persistently long afterward, met by Earl Russell in the name of the Queen's Government with subtleties of reservation and exception, the effect of which would have been, instead of closing up the controversy, to leave us in a condition worse than before, and more perilous to the cause of peace.

The Government of the United States has never been able to appreciate the force of the reasons alleged in support of such reservations and exceptions. When one Power demands of another the redress of alleged wrongs, and the latter entertains the idea of arbitration as the means of settling the question, it seems irrational to insist that the arbitration shall be a qualified and limited one, through apprehensions lest, peradventure there might thus be implication that such wrongs had been committed by intention, and that such implication would be injurious to the honour of the wrong-doing Government. On these premises, arbitration may be the means of adjusting immaterial international wrongs, but not the material ones; that is to say, if the grievances be serious, the two nations must of necessity go to war, while neither desires it, which would be an absurd conclusion.

Lord Stanley and Lord Clarendon appear to have seen this, and, therefore, to have regarded the particular question with more correct estimation of its incidents than Lord Russell, and thereupon to have admitted as theory, comprehensive arbitration concerning all questions between the Governments.

But the Convention which, in this view, was negotiated by the Earl of Clarendon and Mr. Reverdy Johnson, did not prove satisfactory to the Senate of the United States.

It is well known to the Government of Great Britain that the President and the Senate of the United States are distinct powers of the Government, associated in the conclusion of Treaties and in the appointment of public officers, but not dependent one on the other, nor of necessity entertaining the same opinion on public questions. Each acts on appropriate convictions of duty and of right—and the Senate has the same absolute power to reject a Treaty as the President has to negotiate one.

Of course it is not necessarily incumbent on the President to express approval or disapproval of an act of the Senate.

But 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 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.

At the present stage of the controversy, the sole object of the President is to state the position and maintain the attitude of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper (which you are at liberty to read to Lord Clarendon) to state calmly and dispassionately, with a more unreserved freedom than might be used in one addressed directly to the Queen's Government, what this Government seriously considers the injuries it has suffered. It is not written in the nature of a claim; for the United States now make no demand against Her Majesty's Government on account of the injuries they feel they have sustained.

Although the United States are anxious for a settlement on a liberal and comprehensive basis, of all the questions which now interfere with the entirely cordial relations which they desire to exist between the two Governments, they do not now propose or desire to set any time for this settlement. On the contrary, they prefer to leave that question, and also the more important question of the means and method of removing the causes of complaint, of restoring the much

desired relations of perfect cordiality, and the preventing of the probability of like questions in the future, to the consideration of Her Majesty's Government. They will, however, be ready whenever Her Majesty's Government shall think the proper time has come for a renewed negotiation, to entertain any proposition which that Government shall think proper to present, and to apply to such propositions their earnest and sincere wishes and endeavours for a solution, honourable and satisfactory to both countries.

I am, &c.

(Signed) HAMILTON FISH.

(No. 4.)

Mr. Motley to the Earl of Clarendon.

*Legation of the United States,
London, 23rd October, 1869.*

MY LORD,

IN reference to the conversation which I had with your Lordship on the 10th of June last, and to the despatch from the United States' Secretary of State which I had the honor to read to you on the 15th instant, it may have possibly appeared that there was some inconsistency between the views of the President upon the subjects of the recognition of the late insurgents in the Southern States as belligerents, and the destruction of American commerce by cruizers of British origin carrying the insurgent flag, as verbally expressed by me at the interview in June, and those views as set forth in the above-mentioned Despatch. I think it necessary to inform your Lordship, therefore, that the Secretary of State, on reception of my despatch recounting the substance of the conversation in June, observed to me in a despatch of the 29th of June, that it did not seem that the President's view of the right of every Power, when a civil conflict has arisen within another State, to define its own relations and those of its citizens, had been conveyed in precise conformity to that view, as the Secretary of State desired to present it to me, and as it doubtless would have been conveyed by me had my communication been made in writing.

I would, therefore, request your Lordship to consider the despatch of the United States' Secretary of State, which I read to you on the 15th instant, and a copy of which I have had the honor of sending to your Lordship, as containing the exact and authoritative statement of the President's views on this subject, as laid down in all the instructions given under his directions by the Secretary of State.

I pray your Lordship to accept the assurance of the highest consideration, with which

I have, &c.,

(Signed) JOHN LOTHROP MOTLEY.

(No. 5.)

The Earl of Clarendon to Mr. Motley.

*Foreign Office,
November 5th, 1869.*

SIR,

I HAVE the honour to acknowledge the receipt of your letter of the 23rd ultimo, requesting that the despatch from the United States' Secretary of State, which you read to me on the 15th ultimo, and of which you have been good enough to furnish me with a copy, should be considered as containing the exact and authoritative statement of the President's views, as laid down in the instructions given under his direction on the

subjects to which it relates, and I have to state to you that your communication shall receive due attention.

I have at the same time to express to you my regret at the delay which has occurred in acknowledging the receipt of your letter.

(Signed) CLARENDON.

(No. 6.)

The Earl of Clarendon to Mr. Thornton.

SIR, *Foreign Office, November 6, 1869.*

MR. MOTLEY called upon me at the Foreign Office on Friday the 15th of October, and read to me a despatch from Mr. Fish on the "Alabama" claims.

When he had concluded I said that although I had not interposed any observations, and should not then, in compliance with the wish he had expressed, enter into any discussion on the subject, yet I hoped that my silence would not be considered to indicate that the despatch did not admit of a complete reply. I requested that he would have the goodness to give me a copy of the despatch, as I could not undertake from memory accurately to report to my colleagues the contents of the long and important document he had just rapidly read to me.

Mr. Motley agreed to do so if I would ask him for it officially, and I accordingly addressed to him the same afternoon, the letter of which I inclose a copy, and received from him on the afternoon of the 18th a copy of Mr. Fish's despatch, of which I now also inclose to you a copy.

This despatch, as you will see, recapitulates at great length the causes of dissatisfaction which the Government of the United States considers itself entitled to feel with the conduct of the British Government during the late civil war; but it does not make any proposition as to the manner in which that dissatisfaction may be removed, or offer any solution of the difficulty.

On the contrary, Mr. Fish distinctly says that the President is not yet prepared to pronounce on 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 cruizers fitted out in the ports of Great Britain; neither is he 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; neither does he attempt now to measure the relative causes of injury, as whether by untimely recognition of belligerency, by suffering of the fitting out of rebel cruizers, or by the supply of ships, arms, and munitions of war to the Confederates or otherwise; neither does it fall within the scope of his 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 subjects the President, Mr. Fish, says, will be prepared to consider hereafter, with a 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 interest of the United States.

The object of his despatch, Mr. Fish goes on to say, is to state calmly and dispassionately what

the Government of the United States seriously consider to be the injuries it has suffered; it is not written in the nature of a claim, for the United States now make no demand against Her Majesty's Government, on account of the injuries they feel they have sustained. Although the United States are anxious for a settlement on a liberal and comprehensive basis of all the questions which now interfere with the entirely cordial relations which they desire should exist between the two Governments, yet they do not now propose or desire to fix any time for this settlement. They prefer to leave that and the more important question of the means and method of removing the causes of complaint, of restoring the much-desired relations of perfect cordiality and the prevention of the probability of like questions in future, to the consideration of Her Majesty's Government; but they will be ready, whenever Her Majesty's Government shall think the proper time has come for a renewed negotiation, to entertain any propositions which that Government shall think proper to present, and to apply to such propositions their earnest and sincere wishes and endeavours for a solution honourable and satisfactory to both countries.

I have recited at length the concluding passages of Mr. Fish's despatch, because they express many sentiments which Her Majesty's Government most cordially and sincerely reciprocate. The Government of Her Majesty equally with the Government of the United States earnestly desire that all differences between the two nations may be adjusted amicably and compatibly with the honour of each, and that all causes of future difference between them may be prevented; and they would heartily co-operate with the Government of the United States in laying down as between themselves, and in recommending for adoption by other maritime nations, such principles of maritime law as might obviate the recurrence of similar causes of difference between them.

And it is because they earnestly desire to hasten the period at which these important objects may be accomplished, that Her Majesty's Government have determined not to follow Mr. Fish through the long recapitulation of the various points that have been discussed in the voluminous correspondence that has taken place between the two Governments for several years.

Her Majesty's Government had indeed hoped that by the Convention which, under the instructions of his Government, and with their full and deliberate concurrence, Mr. Reverdy Johnson signed with me on the 14th of January of the present year, all correspondence between the two Governments had been brought to an end, and that all matters in dispute would be referred for settlement to a dispassionate tribunal. With a view to that result, Her Majesty's Government had in some degree departed from their deliberate convictions and declared resolves; they agreed to the mode of settlement proposed by the United States' Government, which was more than once in the course of that negotiation modified to meet the wishes of that Government; but they did so willingly, because they thought the restoration of a good understanding between Great Britain and the United States might well be purchased by concessions kept within bounds, and not inconsistent with the honour of this country.

Her Majesty's Government learned with deep concern that the Senate of the United States, in the exercise of the powers unquestionably conferred upon it by the Constitution, repudiated the acts of the Government under whose authority

that Convention was concluded, and by rejecting it had left open the whole controversy between the two countries, and had indefinitely prolonged the uncertainty attendant on such a state of things.

Her Majesty's Government regret no less sincerely that the President of the United States concurs with the Senate in disapproving that Treaty: but their regret would in some degree be diminished if Mr. Fish had been authorized to indicate some other means of adjusting the questions between the two countries, which, as long as they remain open, cannot be favourable to a cordial good understanding between them. This, however, Mr. Fish has not been empowered to do, but he expresses the readiness of the President to consider any proposal emanating from this country. It is obvious, however,—and Mr. Fish will probably on reflection admit,—that Her Majesty's Government cannot make any new proposition or run the risk of another unsuccessful negotiation, until they have information more clear than that which is contained in Mr. Fish's despatch, respecting the basis upon which the Government of the United States would be disposed to negotiate.

But Her Majesty's Government fully agree with Mr. Fish in considering that it would be desirable to turn the difficulties which have arisen between the two Governments to good account, by making the solution of them subservient to the adoption, as between themselves in the first instance, of such changes in the rules of public law as may prevent the recurrence between nations that may concur in them of similar difficulties hereafter.

You may assure Mr. Fish that Her Majesty's Government will be ready to co-operate with the Government of the United States for so salutary a result, which would redound to the mutual honour of both countries, and, if accepted by other maritime nations, have an important influence towards maintaining the peace of the world.

You will read this despatch to Mr. Fish, and give him a copy of it if he should desire to have one.

I am, &c.
(Signed) CLARENDON.

(No. 7.)

The Earl of Clarendon to Mr. Thornton.

Foreign Office,

SIR,
November 6, 1869.

WITH reference to that passage of Mr. Fish's despatch of the 25th of September in which he says that the object of his dispatch, which Mr. Motley is at liberty to read to me, is to state calmly and dispassionately, with a more unreserved freedom than might be used in one addressed directly to the Queen's Government, what the Government of the United States considers the injuries it has suffered, I have to say that, looking upon this dispatch as not being of a strictly official character, and as being communicated to me personally rather than as the Representative of the Queen's Government, I have not thought it necessary, in my official reply to the communication made by Mr. Motley, to express my dissent from those statements.

I desire, however, to place before Mr. Fish, in the same manner as Mr. Motley was instructed to place before me, some observations that have occurred to me to make on the statements in his despatch; and I accordingly transmit to you a paper to that effect, which you will read to Mr.

Fish, giving him a copy if he should desire to have one; and you will explain to him the reasons, as stated in his own despatch, which have induced me to adopt this course.

I am, &c.

(Signed) CLARENDON.

Observations on Mr. Fish's Despatch to Mr. Motley of the 25th September, 1869, respecting the "Alabama," &c., Claims.

1. *The Queen's Proclamation of Neutrality.*

Mr. Fish recapitulates the arguments previously used by Mr. Seward, as to the "precipitate recognition" of belligerent rights which, he says, "appears in its having been determined on the 6th of May, four days prior to the arrival in London of any official knowledge of the President's Proclamation of the 19th of April, 1861," . . . and "signed on the 13th of May, the very day of the arrival of Mr. Adams, the new American Minister; as if in the particular aim of forestalling and preventing explanations on the part of the United States."

The facts are:—

The President's Proclamation of blockade was published April 19. Intelligence of its issue was received by telegraph (see the "Times") on the 2nd of May.

It was published in the "Daily News" and other papers on the 3rd of May. Mr. Seward in his despatch to Mr. Adams of the 12th of January, 1867, says it "reached London on the 3rd of May."

A copy was received officially from Her Majesty's Consul at New York on the 5th; another copy from Lord Lyons on the 10th. It was communicated officially by Mr. Dallas to Lord Russell on the 11th, with a copy of a Circular from Mr. Seward to the United States' Ministers abroad, dated the 20th of April, calling attention to it, and stating the probability that attempts would be made to "fit out privateers in the ports of England for the purpose of aggression on the commerce of the United States."

The reason of the delay in receiving the copy from Washington was in itself a proof of the existence of civil war, arising, as it did, from the communication between Washington and Baltimore being cut off in consequence of the Confederate troops threatening the capital.

"The prematurity of the measure is further shown by the very tenor of the Proclamation"—"Whereas hostilities have unhappily commenced between the Government of the United States of America, and certain States styling themselves the Confederate States of America." Exception is also taken to the use of the word "contest," as distinct from "war."

It will be seen on referring to the Report of the Royal Commission for inquiring into the Neutrality Laws (Appendix) that the form of words used is taken from previous Proclamations, "Whereas hostilities at this time exist" (June 6, 1823). "Engaged in a contest" (September 30, 1825, Turkey and Greece). "Whereas hostilities have unhappily commenced" (May 13, 1859, Austria, France and Italy). The same form was used in the case of Spain and Chili (February 6, 1866), and Spain and Peru (March 13, 1866), "Hostilities have unhappily commenced" (Austria, Prussia, Italy, Germany, June 27, 1866).

The order prohibiting prizes from being brought into British ports, for which the United States'

Government thanked the British Government, as being likely to give a death blow to privateering, speaks of "observing the strictest neutrality in the contest which appears to be imminent" (June 1, 1861).

It is remarkable that, in the case of Turkey and Greece, British subjects were warned to respect "the exercise of belligerent rights." This is omitted in the United States' case, the belligerents being spoken of as "the Contending Parties."

The expression "States styling themselves the Confederate States of America" was purposely adopted to avoid the recognition of their existence as independent states, and gave them great offence.

The French proclamation of the 10th of June has "la lutte engagée entre le Gouvernement de l'Union et les Etats qui prétendent former une Confédération particulière."

The Spanish Proclamation, which the United States Minister at Madrid (see Diplomatic correspondence laid before Congress, 1861, p. 224), informed the Spanish Government "the President had read with the greatest satisfaction," issued on the 17th of June, 1861, has "Confederate States of the South," and uses the term "belligerents" three times over.

Mr. Fish's despatch states that the "assumed belligerency" was a "fiction," the "anticipation of supposed belligerency to come, but which might never have come if not thus anticipated and encouraged by the Queen's Government."

What are the facts? A large group of States, containing a population of several millions, and comprising a compact geographical area enabling them to act readily in concert, had established a *de facto* Government, with a President, Congress, Constitution, Courts of Justice, army, and all the machinery of military and civil power. They possessed the ports along upwards of 2,000 miles of coast; with the exception of Forts Pickens and Munroe, all the Federal posts and forts had been evacuated, including Harper's Ferry, the arsenal of the Potomac valley, Fort Sumter, the only one which had offered resistance, had fallen a month previously, April 13. The Confederate troops were in occupation of the Shenandoah lines, and threatening Washington. The Confederate President had declared war, and called for a levy of 32,000 troops, to which all the seceded States had responded promptly. On the other hand, the Federal President had called for 75,000 volunteers on the 15th of April, and for 42,000 more on the 3rd of May, and as fast as the regiments could be armed they were hurrying to the defence of Washington. The contending armies were, indeed, face to face.

So much for the hostilities on land. The operations at sea, in which British interests were more directly affected, had been carried on with equal vigour. On the 17th of April the Confederate President issued his Proclamation offering to grant letters of marque, which was followed, two days afterwards, by the Federal Proclamation of blockade. At the date of the Queen's Proclamation of neutrality, both these had been carried, or were being carried into effect. The Federal Government had instituted the blockade of Virginia and North Carolina, which was declared to be effective on the 30th of April, and were rapidly dispatching all the merchant-vessels which they could procure, and which they were able to convert into ships-of-war, to the blockade of the other ports. The "General Parkhill," of Liverpool, was captured by the United States' ship "Niagara" while attempting to run the blockade of Charlestown on the

12th of May; and the British vessels "Hilja" and "Monmouth" warned off on the same day. Confederate privateers were already at sea. One was captured at the mouth of the Chesapeake River on the 8th of May by the United States' ship "Harriet Lane." On the 15th, the Federal bark "Ocean Eagle" of Rockhead, Maine, was taken by the Confederate privateer "Calhoun" off New Orleans. At the same port Captain Semmes had already received his Commission and was engaged in the outfit of the "Sumter."

Could any explanations which Mr. Adams might have had to offer alter such a state of things as this? Can any other name be given to it than that of civil war?

It is stated that there was no fact of continued and flagrant "hostilities" to justify the action of Great Britain in issuing a proclamation of neutrality.

Mr. Seward, writing at the time, and previously to the Queen's Proclamation (May 4), characterised the proceedings of the Confederates as "open, flagrant, deadly war," and as "civil war" (Congress Papers, 1861, page 165), and in a communication to M. de Tassara, the Spanish Minister, referred to the operations of the Federal blockade as belligerent operations which would be carried on with due respect to the rights of neutrals.

Judge Betts, in the cases of the "Hiawatha," &c., said, "I consider that the outbreak in particular States, as also in the Confederated States, was an open and flagrant civil war."

It was also judicially decided by the Supreme Court of the United States in the case of the "Amy Warwick" and other prizes, that "the proclamation of blockade is itself official and conclusive evidence that a state of war existed which demanded and authorized such a measure." Moreover, the joint resolution of Congress in July, 1861, approving and confirming the acts of the President ("North America, No. 1, 1862," page 57), commences, "Whereas, since the adjournment of Congress on the 4th of March last, a formidable insurrection in certain States of this Union has arrayed itself in armed hostility;" and a Resolution of the House of Representatives, of the 22nd of July, 1861, speaks of the "present deplorable civil war," and of "this war."

The date at which the civil war actively commenced has, therefore, been fixed by the published despatches of the Secretary of State, by proceedings in Congress, by the formal judgment of the United States' Prize Courts, as well as by the universal assent of all the neutral Powers concerned; but it is urged that, nevertheless, there was no necessity for Great Britain to take notice of it, as no ship of the insurgents had appeared in British ports, no collision occurred at sea, nor did the nearness of Great Britain to the seat of hostilities compel her to act.

With regard to the latter point, it is difficult to see how one nation can be much nearer to another than England to the United States, seeing that the British dominions touch the United States on two sides, while the British Islands of New Providence, &c., lie immediately in front. As to a collision at sea, it was apparent that British commerce must be interfered with the moment the blockade came into operation, as indeed was the case, several British vessels having been captured before there was time for the intelligence of the Proclamation of Neutrality to reach America. As to the arrival of Confederate ships in British ports, such ships were afloat and might at any time be expected. As Mr. Dana, in the notes to the eighth edition of Wheaton

expresses it (p. 35), "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."

The British Government were compelled to take action of some sort; was that action really unfriendly? was it intended to be unfriendly?

No one who recollects what actually passed, or will consult "Hansard," can suppose that the Proclamation was intended to be unfriendly. On the contrary, as was stated by Mr. Foster in his speech at Bradford, it was absolutely pressed upon the Government by the friends of the Northern States, who were afraid lest Confederate privateers should be fitted out in British ports.

Nor was its immediate result injurious to the Federal States. Far from being so, it legitimized the captures of the blockading squadron, and, in the language of the Prize Court, "estopped" the British merchants, whose vessels were seized, from making reclamation.

While the intelligence of the issue of the Queen's Proclamation was still fresh, and almost immediately after hearing of the French and Spanish Proclamations of Neutrality, the President in his Message of the 4th of July, 1861, stated that he was "happy to say that the sovereignty and rights of the United States are now practically respected by foreign Powers, and a general sympathy with the country is manifested throughout the world."

Does any one really believe that the Queen's Proclamation in the very least influenced the movements of the Confederate armies? All the preparations for war had been made long before, munitions collected, troops levied, and generals appointed. The Proclamation reached America at the end of May, by which time the Confederates had taken up their position in the Upper Potomac, and the Federals had occupied Alexandria in Virginia with a force of 13,000 men (May 24).

The armies on both sides were in motion; skirmishes were daily occurring; engagements took place at Little Bethel on the 10th of June, at Carthage, Missouri, on the 6th of July, and at Centreville on the 18th, followed by the great battle of Manassas Junction on the 21st. Can any one suppose that if the Proclamation had not been issued that battle would not have been fought.

The charge of premature recognition, on examination, reduces itself to this, that the Proclamation ought not to have been issued until Mr. Adams arrived, or until some event called for it. Against this is to be set the fact that the Proclamation was considered by some friends of the Northern States as a step taken in their interests, and that it was further pressed upon the Government by Mr. Dallas's communication of Mr. Seward's circular. Moreover, Confederate privateers were at sea, and British vessels being made prizes by the Federal blockading fleet.

Besides the assertion of the premature recognition of belligerent rights, the despatch states that maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were, "by virtue of the Proclamation," 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, in a preceding passage, admits that national belligerency is "an existing fact," and he might have added that it exists independently of any official proclamations of neutral Powers, as is shown by the records of the American Prize Courts, which continually recognize the

belligerency of the South American States; although, as Mr. Seward stated in one of his despatches, the United States have never issued a proclamation of neutrality except in the case of France and England in 1793. This was proved in the civil war by the reception at Curacao of the Confederate vessel "Sumter" as a belligerent cruiser, though the Netherlands had issued no Proclamation of neutrality. It was this recognition of the "Sumter," after her departure from New Orleans (July 6, 1861), at Curacao, and at Cienfuegos, which first practically accorded maritime belligerent rights to the Confederates, a fact which is overlooked when it is alleged that Confederate "belligerency, so far as it was maritime," proceeded "from the ports of Great Britain and her dependencies alone."

Indeed, it is not going too far to say that the Confederates derived no direct benefit from the Proclamation. Their belligerency depended upon the fact (a fact which, when we are told that the civil war left behind it two millions and a-half of dead and maimed, is unfortunately indisputable) that they were waging civil war. If there had been no Proclamation, the fact would have remained the same, and belligerency would have had to be recognised either on behalf of the Northern States by admitting the validity of captures on the high seas for the carriage of contraband or breach of blockade, or on the arrival of the "Sumter," or some similar vessel in a British port.

In no case can it be really supposed that the recognition of belligerency, which, unless neutral nations abandoned their neutrality and took an active part in the contest, was inevitable, materially influenced the fortunes of such a fearful and protracted civil war.

At all events, if it did, the Confederates never acknowledged it; the recognition of belligerency they regarded (as indeed was the case) as a right which could not be denied to them. What they sought was not the mere technical title of "belligerents," but a recognition of independence, and, when they found that it was hopeless to expect England to accord it, they cut off all intercourse with this country, expelled Her Majesty's Consuls from their towns, and did everything in their power to show the sense which they entertained of the injury which they believed had been inflicted upon them. The result being that, while one side has blamed us for doing too much, the other side has blamed us for doing too little; and thus an assumption of neutrality has been regarded both by North and South as an attitude of hostility.

As to the Queen's Proclamation rendering lawful the despatch of the "Alabama," "Shenandoah," and "Georgia," from British ports, to which it is to be presumed the expression "maritime enterprises" refers, it is to be remarked that it is exactly against such enterprises that the Proclamation reciting the terms of the Foreign Enlistment Act was intended to warn British subjects. Instead of rendering them lawful it rendered them additionally unlawful, by giving notice of their illegality.

There would be no difficulty in showing by precedents from American Prize Courts that no Proclamation of neutrality is required to confer belligerent rights on vessels commissioned by a *de facto* Government.

It is admitted that at the time these "enterprises" were undertaken, "hostilities" in America were being prosecuted "on a scale of gigantic magnitude." After, therefore, the "Alabama" escaped on the 29th of July, 1862, she became, by virtue of her Confederate Commission, un-

doubtedly a belligerent cruiser, irrespective of any acknowledgment of belligerency by Great Britain, and was received accordingly by the French authorities at Martinique, where she first touched after leaving Liverpool.

A pirate is *hostis humani generis*, one owing obedience to no authority. If the "Alabama" had been really a pirate depredating on American commerce, it would have been the duty of the French to seize her and execute justice on her commander and crew, a pirate being triable wheresoever found.

Judge Nelson, in the case of the Confederate privateer "Savannah," ruled that though Confederate privateers were pirates *quoad* American jurisdiction, they were not pirates *jure gentium*; and, in the case of the "Golden Rocket," in which the owner brought an action in an American Court against an Insurance Company for the capture of his ship by the "Florida," he being insured against piracy but not against war risk, it was decided that captures by Confederate cruisers were not "piracy" within the usual meaning of the word, and that the Company was not liable.

The American Courts having thus conclusively dealt with the matter, it is unnecessary to pursue the subject further. What is probably meant is, that if the Confederates had not possessed a *de facto* Government, and had not been belligerents in the sense of waging public war, vessels under their Commission would have been mere roving adventurers, pursuing merchantmen for the sake of private plunder, in short, pirates; but by the admission that "hostilities" (the very word to which exception is taken in the Neutrality Proclamation), were being prosecuted on a great scale, the only ground on which such a supposition could rest is cut away.

II. The Dispatch of Confederate Cruisers from British Ports.

Any one who read the despatch without any previous knowledge of the subject, might suppose from the language used, that fleets of privateers had been dispatched from British ports with the connivance if not with the direct support of Her Majesty's Government:—

"Great Britain . . . permitted armed cruisers to be fitted out," &c.

"The Queen's Government . . . suffered ship after ship to be constructed in its ports to wage war on the United States."

"Many ships . . . were, with ostentatious publicity, being constructed."

"Permission or negligence which enabled Confederate cruisers from her ports to prey," &c.

"Great Britain alone had founded on that recognition a systematic maritime war." . . . "a virtual act of war."

"Suffering the fitting out of rebel cruisers."

The fact being, that *only one vessel*, of whose probable intended belligerent character the British Government had any evidence, escaped, viz., the "Alabama."

The "Shenandoah" was a merchant ship employed in the India trade under the name of the "Sea King." Her conversion into a Confederate cruiser was not heard of until more than a month after she had left England.

The "Georgia," or "Japan," was actually reported by the Board of Trade surveyor, who had no idea of her destination, to be built as a merchant-ship, and to be rather crank. Nothing was known of her proceedings until she had taken her arms and crew on board in Morlaix Bay, and reached Cherbourg. Her real point

of departure, as a cruiser, was France, and not England.

The "Florida" was detained at Nassau on suspicion, but discharged by the local Admiralty Court, there being no evidence of her being anything but a blockade-runner. She was fitted out as a ship of war at Mobile.

On the other hand, the British Government prevented the outfit of the "Rappahannock," prosecuted and detained the "Alexandra," seized the Liverpool rams, and stopped the "Pampero," besides investigating carefully every case of suspected outfit brought forward by Mr. Adams, and he complained of nineteen, as well as every case which could be discovered independently. Amongst other things, taking charge of Captain Osborne's Anglo-Chinese flotilla, which it was apprehended might fall into the hands of the Confederates, at a cost to this country of 100,000*l*.

That any sea-going steamer can be converted into a cruiser by strengthening her bulkheads and arming her, which can be done at sea as well as on shore, is proved by the fact that the most efficient blockading vessels in the Federal navy were converted blockade-runners.

"The Alabama."—Mr. Fish speaks of the neglect of the officers of the British Government to detain Confederate cruisers, and especially the "Alabama."

There was no neglect to detain the "Shenandoah" or "Georgia" for the reason that neither the Government nor its officers knew they were being intended for the Confederate Service. Indeed, it has never been proved that the persons who sold those vessels knew it. Probably they did, but a case might very readily arise in which the vendors might be really ignorant. The American Government could not have expected the English revenue officers to prevent every large steamer leaving England in ballast.

With regard to the "Alabama," it is assumed "that the negligence of the officers of the British Government 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."

By a *petitio principii*, the whole argument is thus assumed to be in favour of the United States.

There is no doubt that the "Alabama" might, if she had not escaped at the moment when the case against her appeared to be legally established, have been seized and tried under the Foreign Enlistment Act, though the result, looking to what occurred in the case of the "Alexandra," might have been doubtful.

This, however, is a very different thing from admitting that her sale to the Confederates was a violation of British neutrality for which the nation is responsible. This was the first instance which occurred of the sale of a ship under such circumstances, and the British Government had, in fact, no suspicion of what was going to be done in the matter, no information having been received of an intention to take out her arms and crew in a separate vessel.

Judge Story, in the well-known case, "Santissima Trinidad and St. Ander," laid it down as indisputable that "there is nothing in our laws, or in the laws of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is

a commercial venture, which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."

But it must be remembered that when Mr. Fish claims compensation for *all* her depredations, he should not overlook the fact of the negligence shown by the Federal navy in twice letting her escape from them. First, when Mr. Adams urged the Captain of the Federal ship, which at his instance had gone to Holyhead to look after her, to pursue her, when the Captain refused, and went off to his station at Gibraltar instead—a proceeding at which Mr. Adams expressed the greatest indignation (see Congress Papers, 1862, p. 159); and secondly, when the United States ship "San Jacinto" blockaded her in the French port of St. Pierre, Martinique, and then suffered her to slip away at night from under her bows.

III. *Supplies furnished to the Confederates by British Subjects.*

Mr. Fish states that the Confederates had no ships, no mechanical appliances, no open sea-ports, &c., and implies that the maritime force of the Confederates was entirely derived from England.

The "Sumter," "Nashville," and "Florida," however, all sailed from Confederate ports in which they were armed and fitted out, besides a variety of small coasting privateers, such as the "Talahassee," whose captures form a considerable item in the list of Federal maritime losses lately presented to Congress.

"On the land it was in like manner the munitions of war and the wealth drawn by the Insurgents from Great Britain which enabled them to withstand, year after year, the arms of the United States."

If, as Mr. Fish states, the Confederates had no open sea-ports, how did these munitions and arms reach them?

Either the blockade was inefficient, in which case it was illegal, and neutral nations were not bound to respect it, or it was efficient, as it was recognized by Great Britain to be, and the supply of arms, &c., was hazardous and uncertain.

There is no doctrine more clearly settled than that neutral nations are not responsible for the supplies of contraband sent through a blockade by their subjects. Indeed, the very existence of a blockade implies this, for, if it were the duty of neutrals to prevent the shipment of supplies to belligerents, why should there be a blockade at all? Each side would claim compensation for the assistance rendered to the other, and neutrality would become impossible.

If once it be conceded that blockade-running is an offence against neutrality in a civil war, the precedent would not fail to be invoked in all wars by whichever belligerent considered himself most aggrieved. Instead of establishing a principle in the interests of future peace, this would lead to endless complications and claims and counter-claims which would make the end of one war the sure beginning of another.

The question of the action of the Dutch in the War of Independence cannot be dealt with without a review of the history of the period, for which this memorandum does not afford space. An account of the proceedings at St. Eustache, and subsequent discussions with the Dutch Government, will be found in De Marten's "Nouvelles Causes Célèbres du Droit des Gens."

As to the supplies sent through the blockade having been organized by Confederate agents in England, the example was set them by the

bureau established by Franklin at Paris for the assistance of the American Provinces.

On the other hand, it is notorious that the Federal troops were plentifully provided with arms and munitions from this country.

Her Majesty's Government have yet to learn that it has been held in international discussions that individuals are precluded from supplying belligerents with munitions of war.

IV.—*Indirect Injury to American Commerce.*

"Indirectly the effect was to increase the rate of insurance in the United States, to diminish exports and imports, and otherwise obstruct domestic industry and production, and to take away from the United States its immense foreign commerce and to transfer this to the merchant vessels of Great Britain."

Mr. Fish proceeds to quote figures, showing the decrease in American tonnage between 1860 and 1866.

This allegation of national, indirect or constructive claims was first brought forward officially by Mr. Reverdy Johnson, in his attempt to renew negotiations on the Claims Convention in March last (North America, No. 1, 1869, page 46).

Mr. Thornton has shown the difficulty there would be in computing the amount of claim even if it were acknowledged (North America, No. 1, 1869, page 53), in a despatch in which he mentions the continual decrease of American tonnage.

This is partly, no doubt, to be ascribed to the disturbance of commercial relations consequent on a long war, partly to the fact that many vessels were nominally transferred to British owners during the war to escape capture. Sir E. Hornby, in a recent report, states that this was a constant practice in China.

Is not, however, a good deal of it to be attributed to the high American Tariff, which makes the construction of vessels in American ports more expensive than ship-building in England, and has thereby thrown so large a proportion of the carrying trade into English hands?

There must be some such cause for it, or otherwise American shipping would have recovered its position since the war, instead of continuing to fall off.

"Neither in the events which proceeded that war" (of 1812) "nor in the events of the war itself did the United States suffer more," &c.

No one can now wish to recall to recollection the particular events of that war: it would be much better for the two nations to congratulate themselves that one of the principal causes of it, the nationality dispute, has, it is to be hoped, been set at rest finally by Lord Stanley's Protocol.

V. The despatch, in conclusion, refers "to important changes in the rules of public law," the desirableness of which has been demonstrated, but does not say what are the changes to which he alludes.

This is in the spirit of the proposal made by

Her Majesty's Government in December, 1865, "North America, No. 1, 1866," page 164):—

"I, however, asked Mr. Adams whether it would not be both useful and practical to let bygones be bygones, to forget the past, and turn the lessons of experience to account for the future. England and the United States, I said, had each become aware of the defects that existed in international law, and I thought it would greatly redound to the honour of the two principal maritime nations of the world to attempt the improvements in that code which had been proved to be necessary. It was possible, I added, that the wounds inflicted by the war were still too recent, and that the ill-will towards England was still too rife, to render such an undertaking practicable at the present moment; but it was one which ought to be borne in mind, and that was earnestly desired by Her Majesty's Government, as a means of promoting peace and abating the horrors of war; and a work, therefore, which would be worthy of the civilization of our age, and which would entitle the Governments which achieved it to the gratitude of mankind."

It is not necessary in this Memorandum to dwell on the alleged efficiency of the American, as compared to the English Foreign Enlistment Act. The failure of the American Act in the Portuguese cases, in the repeated filibustering expeditions of Walker against Central America, and the acquittal under it of Lopez, the invader of Cuba, are proofs that its action cannot always be relied upon; and this is further corroborated by the difficulties now being experienced in dealing with the "Hornet," at Wilmington. Although, as Mr. Fish says, there have been prosecutions under it, it is believed that from the trial of Gideon Henfield, in 1793, to the present day, there has never been a criminal conviction. The only result of the proceedings *in rem* has been to restore prizes, never to punish privateering; and the effect of the bonds which the Act provides may be taken that the owners of a vessel shall not *themselves* employ her in a belligerent service, and which has, it is believed, never been practically enforced, is, as Mr. Bemis, of Boston, points out in his volume on American neutrality, to add so much to the price of the vessel.

With regard to the claims for "vast national injuries" it may be as well to observe that Professor Wolsey, the eminent American jurist, has repudiated them as untenable; while the strongest arguments in favour of the recognition of Confederate belligerency are to be found in the notes to Mr. Dana's eighth edition of "Wheaton;" and Mr. Lawrence (the editor of the Second Annotated Edition of "Wheaton"), in a recent speech at Bristol stated that "as far as respects the complaint founded on the recognition of the belligerent rights of the Confederates, I cannot use too strong language in pronouncing its utter baseless character. No tyro in international law is ignorant that belligerency is a simple question of fact. With the late Sir Cornwall Lewis, we may ask, if the array of a million of men on each side does not constitute belligerency, what is belligerency? But what was the proclamation of the President, followed up by the condemnation of your ships and cargoes for a violation of the blockade which is established, but a recognition of a state of war? At this moment the United States, in claiming the property of the late Confederate Government, place before your

tribunals their title on the fact of their being the successors of a *de facto* Government. I repeat that, however valid our claims may be against you on other grounds, there is not the slightest pretext for any claim against you based on the public admission of a notorious fact, the existence of which has been recognized by every department of the Federal Government."

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