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American Volunteer.

BY GEO. SANDERSON.]

“OUR COUNTRY—RIGHT OR WRONG.”

[AT TWO DOLLARS PER ANNUM.]

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AGENTS.

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MR. BUCHANAN'S SPEECH.

IN SENATE. THURSDAY, June 10, 1841.

Mr. RIVES once more renewed his motion that so much of the President's message as relates to our foreign affairs be referred to the Committee on Foreign Affairs.

Mr. BUCHANAN thereupon rose and addressed the Senate, observing that when he had first read the correspondence between the British Minister, Mr. Fox, and the American Secretary of State, he had at once determined to make, upon the first fit opportunity, some observations upon that correspondence in the face of the Senate and of the country. He regretted that, in finding a fit opportunity, there had, contrary to his own inclinations, been so much delay; but having at length found it, he would accomplish his original purpose, and would do it with as much brevity as possible; premising however, that he should not have thought of such a proceeding had not the example been set and a precedent established at the last session of Congress by the present Secretary of State.

He must be permitted to make one remark by way of preface; and that was, that if he knew himself, he was not actuated in this matter, by any thing like party political feeling. He trusted his construction of some portions of the correspondence in question might prove incorrect; for though he acknowledged himself to be a party man and strongly influenced by party feeling, it had been his endeavor never to carry that feeling with him into the Committee on Foreign Relations, (of which he had for many years been a member,) and he trusted that he had given sufficient evidence of this by his course in the committee.

He had been asked, what objection could be made to the letter of the 24th of April last, lately published, from Mr. Webster, our Secretary of State, to Mr. Fox? There was little, indeed—much, very much, that it contained, had his cordial approbation; but, unfortunately, that letter had little or nothing to do with the substance of the matter. It did not make its appearance until nearly six weeks after the important business between the two Governments had been transacted. It was the letter of the British Minister of the 12th of March; and the instructions of the Secretary of State to the Attorney General of the United States, of the 15th of the same month, which contained the true merits of the case. It was that letter of instructions, a copy of which had doubtless been communicated to the British Minister, and had been openly referred to in the British Parliament; it was these instructions, especially, which lay at the root of the question. On these two papers of the 12th and 15th March, public opinion had been formed and must be formed as well in England as here; and the Secretary's last letter which came limping along six weeks after, however just and however eloquent it might be, could exert but little or no influence either in Europe or in this country.

To understand the merits of the case a brief recapitulation of the facts was necessary. A rebellion, said Mr. B. or, if you please, an attempt at revolution, existed in Canada; during the course of which the insurgents took possession of Navy Island, in the Niagara river. A British militia force of two thousand men was embodied at Chippewa, on the Canada side of the river. The American steamer Caroline, after having carried provisions to the insurgents on Navy Island, (for I believe that was the fact,) together with probably a single cannon, lay at anchor, after her trip, fastened to the wharf at Schlosser, a small village notoriously within the jurisdiction of the United States, under the sacredegis of our protection. And that covered vessel was returned to itself and to its citizens, which would not until the very last, maintain and vindicate its own exclusive sovereignty over its own soil against all foreign aggression.

Under this vessel in American waters, under the guardianship of our sovereignty and of the American flag; and these afforded her no protection. What happened on the night of the 29th of December, 1837? Colonel Allan McNab, a name famous in story, was in command of the body of militia at Chippewa. Under his auspices, a Captain Drew, of the British navy, who, I believe, has since been pensioned for his gallant exploit, undertook to raise a body of volunteers, and by way of characterizing the nature of the service they were to perform, declared that he wanted fifty or sixty desperate fellows, who would be ready to follow him to the devil. Under the authority of this Colonel McNab, now Sir Allan McNab, (for I understand that he has since been knighted by Queen Victoria,) this body of men, with Captain Drew at their head, passed down the Niagara river at the dead hour of midnight, without previous notice, and while the people on board the Caroline lay reposing under the protection of American laws, and made an attack on unarmed men, who were private citizens, not connected in any way with the resistance to British authority, and murdered at least one of their number within the American territory. These barbarians, regardless of the lives of those who may have remained on board, unmoored the boat, towed her into the middle of the river; where a swift and irresistible current soon hurried her down the falls of Niagara, and to this hour it is not known how many American citizens perished on that fatal night. This is no fancy picture. Now, as to the principle of the law of nations which applies to such a case, that pure

patriot and eminent jurist, John Marshall, has expressed it with great force and clearness. He says that "The jurisdiction of a nation, within its own territory, is exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of that restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction."

"Every nation has exclusive jurisdiction over the waters adjacent to its shores, to the distance of a cannon shot, or marine league." — Gallis, C. C. R. 62. According to the settled law of nations, if the Caroline had been a vessel of war, on the high seas, belonging to the insurgents, and after an engagement with a British vessel, she had been pursued within a marine league of the American shore, our national sovereignty, as a neutral power, would immediately have covered her, and a hostile gun could not have been fired against her without affording us grounds for just complaint. If, for example, the British and French nations had been at open war, and a French vessel, in flying before British pursuit, should have been driven within a marine league of the American coast, all further acts of hostility towards her must have instantly ceased, or we, as the neutral power, would have been wounded in the most sensitive point, namely, that of our sovereignty.

I shall not here argue to prove that in this case there has been a gross violation of our national sovereignty, because on that point no gentleman, I am sure, does or can entertain a doubt. That being clear, the American Government is bound to maintain its terms, through our Minister abroad. The letter of Mr. Stevenson on that occasion, does him great honor, indeed. Repeated attempts were made to induce the British Government to answer this remonstrance, but all in vain. It is true that it has been stated in the British House of Commons by one of the British ministers, that the American Government had finally given up the question, and did not intend to insist upon an answer. The pretence for making this statement has most probably arisen from a custom too common among us of publishing diplomatic correspondence, whilst the negotiation to which it relates is still pending. Mr. Stevenson, in his letter to Mr. Forsyth of the 2d July, 1839, employs this language: "I regret to say that no answer has yet been given to my note in the case of the Caroline. I have not deemed it proper, under the circumstances, to press the subject without further instructions from your Department. If it is the wish of the Government that I should do so, I pray to be informed of it, and the degree of urgency that I am to adopt."

To which Mr. Forsyth replies under date of September 11, 1839, as follows: "With reference to the closing paragraph of your communication to the Department, dated 2d of July last, it is proper to inform you that no instructions are at present required for again bringing forward the question of the Caroline." I have had frequent conversations with Mr. Fox in regard to this subject, one of very recent date; and, from its tone, the President expects the British Government will answer your application in the case, without much further delay.

The Senate will thus perceive that there is no foundation in this correspondence for the pretext that the American Government had abandoned the pursuit of this question, unless it may be by garbling the note of Mr. Forsyth and suppressing the sentence which I have just read. Whether the administration of President Van Buren pursued its remonstrance with sufficient energy is not for me to say, although I believe they did, but that forms no part of the question now before the Senate. It seems that, from the conversation of Mr. Fox, Mr. Forsyth was induced to believe that a speedy answer would be given.

On — of November, 1840, this unfortunate man, Alexander McLeod, came voluntarily within the jurisdiction of the United States. I am inclined to believe that the vain boasting of this man, as to his presence and participation in the attack on the Caroline, has occasioned all the difficulty which now exists. I rather think he was not present at the capture of that vessel, and the fact, if it had been wisely used, would have afforded the means of adjusting the difficulty to the satisfaction of both parties. But he came upon the American soil, and in the company of American citizens, openly boasting that he had belonged to Drew's capturing squadron. In consequence of these assertions, he was arrested by the local authorities, and indicted for murder. This state of things gave rise to a correspondence between Mr. Fox and Mr. Forsyth, from which I intend to read a brief extract. The correspondence resulted in this: that Mr. Forsyth expressed it as his opinion, and that of the President of the United States, that under the law of nations the avowal by the British Government of the capture of the Caroline, should such an avowal be made, would not free McLeod from prosecution in the criminal courts of the State of New York. Its effect was merely cumulative. It did not take away the offence of McLeod, but added thereto, and made it a national as well as an individual offence. The legal prosecution of McLeod, and the application were independent of each other, and might be separately and simultaneously pursued. But whether this were the true principle of national law or not, Mr. Forsyth very properly said that the question must be decided by the judiciary of New York; and that, if the position of Mr. Fox were well founded, McLeod would have the full protection of that doctrine before the court. He could

pled that his act had been recognized by the British Government, and if the plea were allowed he would be set at liberty. That was the position of the business at the close of Mr. Van Buren's administration; and a happier, safer, and more secure position of the question for American rights and even for the honor of England, also, could not have been desired. When the trial came on, McLeod would have two grounds of defence: first, that he had not been present at the capture of the vessel; and, next, that this capture had been recognized by the British Government as a public act done under its authority. If, in this state of things, there had been a little prudent delay, the question would probably soon have settled itself to the satisfaction of both parties. But inquiries had been addressed, in Parliament, to the British ministers on this subject, and a high excitement had been produced throughout the British nation. This can always be done in that country on every controversy with America because our side of the question never appears in their public journals. I have been for years in the habit of reading some of the English journals, and, so far as I have observed, our side of the question, even in relation to the north-east boundary, had never to this day been presented to the British public. No Englishman can obtain from any of these journals which I have seen, any distinct idea whatever as to the ground insisted upon by us in that controversy.

An excitement had been raised on the McLeod question, and loud denunciations had been uttered on the floor of the House of Commons. Threats had been made, in case the American Government should dare to retain McLeod in custody. An attempt had been made on both sides of the water, to induce the fact of the American fleet in the Mediterranean, or at least a portion of it, has actually returned home, while all our vessels in that sea had passed the straits and gone into the Atlantic. Some people here even, other than the ladies, became afraid that the British fleets would be upon our coast and lay our cities in ashes. A madulous panic prevailed for a time among those who had weak nerves, and then, to crown all, came the letter of Mr. Fox to Mr. Webster. The British nation has, I freely admit, much to recommend it, but we all know that their diplomatic policy, unlike that of other European nations, has been of a character bold, arrogant, and overbearing. John Bull has ever preferred to accomplish that by main force which other nations would have attempted by diplomacy. I come now to the letter of Mr. Fox, and such a letter! This letter is the more imposing from the fact that it was not Mr. Fox's own composition, but is an official communication from the British Government. This fact appears from its first sentence, which is as follows: "The undersigned, her Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary, is instructed by his Government to make the following official communication to the Government of the U. States."

It is then an official communication from the British Government themselves. It is not my desire on this occasion to excite or here or elsewhere any feelings which should not be excited. I merely state facts. To what is this letter an answer? If any thing, it is the letter of Mr. Forsyth addressed to Mr. Fox on the 26th December, 1840. I will not trouble the Senate to read that paper, they may find it in document 35, page 4. And what is the character of the letter of Mr. Fox? It commences with a peremptory and conclusive settlement of the whole matter so far as the British Government is concerned. It is not sufficient for that Government to say that they take the responsibility of the act of McLeod upon themselves, but they even justify in the strongest terms the capture of the Caroline itself. Yet here is Mr. Webster, on the 24th of April, arguing a question which the British ministry had settled six weeks before. They do not say surrender McLeod and the question of the Caroline shall be left open. That would not be according to the manner of John Bull when he puts himself fairly in motion. He does not stop to argue, but at once cuts the knot without the trouble of giving any reason. Mr. Stevenson had remonstrated in the most proper manner, and had submitted to the British government at London a mass of testimony, but no notice whatever was taken of his communication, and no reason given for their determination. Mr. Fox, or rather that Government, in half a sentence settles the question.

"The transaction in question, (says the letter,) may have been, as her Majesty's Government are of opinion that it was, a justifiable employment of force for the purpose of defending the British territory." &c. Our remonstrance, when this haughty reply was written, had been pending for three years. Mr. Forsyth, in his letter of 26th December, 1840, had argumentatively stated the whole case, setting forth that the avowal of McLeod's act, should it be assumed by the British Government, so far from doing away with our ground of complaint, went only to increase it. It was cumulative, not exculpatory. Whilst it would not relieve McLeod from personal responsibility, it would seriously implicate the British Government in his guilt. And how is that argument answered? In this haughty imperious sentence: "Her Majesty's Government cannot believe that the Government of the United States can really intend to set an example so fraught with evil to the community of nations, and the direct tendency of which must be to bring into the practice of modern war, atrocities which civilization and christianity have long since banished."

Here is no argument attempted, no authority cited, but a simple declaration put forth in the strongest terms as to the "atro-

city" of the principle for which the American Government had been seriously contending. But the crowning point of this insulting letter is yet to come; and I undertake to say that it contains a direct threat from the British Government. I am not extensively acquainted with the language of diplomacy, but I certainly have not seen a thing like this threat in any official communication between civilized and friendly nations for the last fifty years. I hope I may be mistaken in my view of the language, but here it is: "But be that as it may, her Majesty's Government formally demand, upon the grounds already stated, the immediate release of Mr. McLeod; and her Majesty's Government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand."

What consequences? What consequences? After the denunciations we have heard in the British Parliament, and all that occurred in the course of the previous correspondence, could any thing have been intended but "the serious nature of the consequences which must ensue" from war with England? And here let me put a case. I am so unfortunate as to have a difference with a friend of mine. I will suppose it to be my friend from South Carolina, [Mr. Preston.] I know if you please, even that I am in the wrong. My friend comes to me, and demands an explanation, adding, at the same time, these words: "If you do not grant the reparation demanded, I entreat you to consider the serious consequences which must ensue from your refusal. Certain I am there is not a single member of this Senate, I might say, not an intelligent man in the President's power, to enter a *nolle prosequi* against McLeod; it should be done without a moment's delay." "If this indication," says he, "were pending in one of the Courts of the United States, I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a *nolle prosequi* to be entered." But as this was not in Mr. Webster's power, the Governor of New York was in the next place to be assailed, in order to accomplish the same purpose. Mr. Crittenden was informed that he would be furnished with a copy of this instruction, for the use of the Executive of New York and the Attorney General of that State. "Whether," says the Secretary, in this case, "the Governor of New York have that power, or, if he have, whether he would feel it his duty to exercise it, are points upon which we are not informed."

But the Governor of New York proved to be a very restive subject. He felt no inclination whatever to enter a *nolle prosequi* against McLeod. I have seen, somewhere, a correspondence between that officer and the President, but I cannot now find it. The tone of this correspondence on the part of the Governor evinced a spirit of determined resistance to the suggestion of the Secretary. The Governor complained that the District Attorney of the United States was acting as the counsel of McLeod. This, however, according to the explanation of the President, happened by mere accident; the correspondence, at all events, is sufficient to show that Governor Seward did not participate in the views and feelings of the Secretary of the State towards McLeod, and we know that he did not approve of entering a *nolle prosequi* in his case.

But the Attorney General of the United States was armed with his instructions from the Secretary of State, to meet every contingency. If McLeod could not be discharged by a *nolle prosequi*; if he must be tried, then Mr. Crittenden was to consult with McLeod's counsel, and furnish them the evidence material to his defence, and he was even "to see that he have skillful and eminent counsel, if such be not already retained." It is no wonder that it appeared very strange to Governor Seward to find the authorities of the United States thus actively and ardently engaged in defending McLeod whilst the authorities of New York were enlisted with equal vigor in his prosecution. The defence of this man, who had no claim to peculiar favor, except what arose from an earnest desire to please and satisfy the British Government, became the object of the Secretary's peculiar solicitude, and this, too, in the face of a plain, palpable menace from that Government.

The next thing we might hear would be a bill of cost and counsel fees against this Government for the defence of McLeod; it having been imposed as a duty on our Attorney General to see that "he had skillful and eminent counsel." Now these are features in this transaction any thing but creditable to our national character. I think that sufficient decision and firmness have not been displayed by the American Secretary of State. It will ever prove a miserable policy to attempt to conciliate the British Government by concession. It was the maxim of General Jackson that, in our foreign relations, we should ask only what was right, and submit to nothing that was wrong; and, in my judgment, the observance of that maxim is the very best mode of preserving peace. When a nation submits to one aggression, another will soon follow. It is with nations as it is with individuals. Manly and prompt resistance will secure you from a repetition of insult. If you yield once, you will be expected to yield again, till at length there is no end to submission. I do not pretend that Mr. Webster has done wrong intentionally; all I mean to say is, that, in my judgment, he has not, in this instance, displayed a proper and becoming American spirit. If he had waited a little longer before he prepared his instructions to the Attorney General, if he had taken time for reflection before he de-

vised: "The imperious tone of Mr. Fox's letter does not seem to have produced any effect on his mind. Three short days after its date, on the 15th March, 1841, he issues his instructions to the Attorney General. These instructions are the real, substantial answer to Mr. Fox's letter, and have proved entirely satisfactory to the British Government, as they could not have failed to do. The letter written by Mr. Webster, on the 24th of the succeeding April, will never disturb that Government. Long before it was written, the Secretary had granted them every thing which they could have desired.

He at once, by these instructions, abandoned the position so ably maintained by Mr. Van Buren's administration, that McLeod would still be responsible, individually, notwithstanding the destruction of the Caroline. In condemning this position, he uses terms almost as strong as Mr. Fox had done in denouncing it. He says "that an individual forming part of a public force, and acting under the authority of his Government, is not to be held answerable as a private trespasser or malefactor; is a principle of public law sanctioned by the usages of all civilized nations, and which the Government of the United States has no inclination to dispute."

As actions speak louder than words, what did Mr. Webster do with this threatening letter staring him in the face? With fiery expedition he has his Attorney General on the way to Lockport; and I cannot but think, from my personal knowledge of that officer, that the mission on which he was employed could not have been very agreeable to him. He informs the British Government at once, for we ought never to forget that the letter to Mr. Crittenden is in substance the letter to the President's power, to enter a *nolle prosequi* against McLeod; it should be done without a moment's delay. "If this indication," says he, "were pending in one of the Courts of the United States, I am directed to say that the President, upon the receipt of Mr. Fox's last communication, would have immediately directed a *nolle prosequi* to be entered." But as this was not in Mr. Webster's power, the Governor of New York was in the next place to be assailed, in order to accomplish the same purpose. Mr. Crittenden was informed that he would be furnished with a copy of this instruction, for the use of the Executive of New York and the Attorney General of that State.

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atched that officer crisscrossing to New York, his conduct would probably have been different. According to the practice of diplomacy, a copy of these instructions was doubtless at once sent to Mr. Fox. It is certain that they were known to the British Government before the 6th of May, because on that day they were referred to by Lord John Russell on the floor of the House of Commons as a document in possession of the British Cabinet.

I shall now offer a few remarks on the question of public law involved in this case, and then close what I have to say. I sincerely believe the Administration of Mr. Van Buren was perfectly correct on this doctrine, as laid down by Mr. Forsyth. If I had found any authority to induce me to entertain a doubt on that point, I would refer to it most freely. I now undertake to say that the only circumstance which has produced confusion and doubt in the minds of well-informed men on this subject, is that they do not make the proper distinction between a state of national war and national peace. If a nation be at war, the command of the sovereign power to invade the territory of its enemy, and to do battle there against any hostile force, always justifies the troops thus engaged.

When any of the invaders are seized, they are considered as prisoners of war, and as having done nothing but what the laws of war justified them in doing. In such a case they can never be held to answer, criminally, in the courts of the invaded country. That is clear. The invasion of an enemy's territory is one of the rights of war, and, in all its necessary consequences, is justified by the laws of war. But there are offences committed even in open war, which the express command of the sovereign power does not exempt from exemplary punishment. I will give gentlemen an example. A spy will be hung if caught, even though he acted under the express command of his sovereign. We might cite the case of the unfortunate Major-General Blyden, who was arrested on his return from an interview with Arnold, and his life being in danger, the British commander (Sir Henry Clinton, I believe) made an effort to save him, by taking upon himself the responsibility of the act. But although he had crossed our lines without the two nations were in a state of open and flagrant war, in obedience to instructions from his commander-in-chief, yet Washington, notwithstanding, rightfully hung him as a spy.

Now, let me tell whoever shall answer me, (if indeed any gentleman will condescend to notice what I have said—for it seems, we on this side of the Houses are to do all the speaking, and they all the voting,) that whilst all the modern authorities concur in declaring that the law of nations protects individuals when obeying the orders of their sovereign, during a state of open and flagrant war, whether it has been solemnly declared or not, and whether it be general or partial, yet these authorities proceed no further. But, to decide correctly on the application of this principle in the case before us, we must examine that the two belligerents here were England and the United States, and her insurgent subjects on the other hand, and that the United States were a neutral power, in perfect peace with England. But what is the rule in regard to nations at peace with each other? This is the question. As between such nations does the command of an inferior officer of the one, to individuals, to violate the sovereignty of the other, and commit murder and arson, if afterward recognised by the supreme authority, prevent the nation whose laws have been outraged from punishing the offenders. Under such circumstances, what is the law of nations? The doctrine is laid down in Vattel, an author admitted to be of the highest authority on questions of international law; and the very question *totidem verbis*, which arises in this case, is in his book stated and decided. He admits that the lawful commands of a legitimate Government, whether to its troops or other citizens, protects them from individual responsibility for hostile acts done in obedience to such commands, whilst in a state of open war. In such a case, a prisoner of war is never to be subjected to the criminal jurisdiction of the country within which he has been arrested. But what is the law of nations in regard to criminal offences committed by the citizens or subjects of one power, within the sovereignty and jurisdiction of another, they being at peace with each other, even if these crimes are afterwards recognised and justified by the offender's sovereign? This is the case of the capture and destruction of the Caroline. The subject is treated of by Vattel, under the head "of the concern a nation may have in the actions of her citizens," book II, chap. 6, page 164. I shall read sections 73, 74, and 75.

"However, as it is impossible," says the author, "for the best regulated State, or for the most vigilant and absolute sovereign to model at his pleasure all the actions of his subjects, and to confine them on every occasion to the most exact obedience, it would be unjust to impute to the nation or the sovereign every fault committed by the citizens. We ought not, then, to say, in general, that we have received an injury from a nation, because we have received it from one of its members. "But if a nation or its chief approves and ratifies the act of the individual, it then becomes a public concern, and the injured party is then to consider the nation as the real author of the injury, of which the citizen was perhaps only the instrument.

"If the offended State has in her power the individual who has done the injury, she may without scruple bring him to justice, and punish him. If he has escaped, and returned to his own country, she ought to apply to his sovereign to have justice done in the case."

Can any thing in the world be clearer? The author puts the case distinctly. The nation injured ought not to impute to the sovereignty of a friendly nation the acts of its individual citizens, but if such friendly sovereign shall recognise the acts as his own, it then becomes a national concern. But does such a recognition wash away the guilt of the offender, and release him from the punishment due to his offence under the jurisdiction of the country whose laws he has violated? Let Vattel answer this question. He says: "If the offended State has in her power the individual who has done the injury, she may, without scruple, bring him to justice and punish him." There is the direct plan, and palpable authority. And here permit me to add that I think I can prove that, according to the doctrine of Vattel, the British Government should have taken time for reflection before he de-

(Concluded on 2d Page.)