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THE MASON AND SLIDELL CASE.

Letters of the English Minister and Sec. Seward.

Below will be found the correspondence between the British Minister and Secretary Seward from which it may be inferred that the difficulty between this country and England are amicably settled :—

Earl Russell to Lord Lyons.

FOREIGN OFFICE, NOV. 30, 1861.

The Lord Lyons, K. C. B., &c., &c., &c.

My Lord—Intelligence of a very grave nature has reached Her Majesty's Government:

This Intelligence was conveyed officially to the knowledge of the Admiralty by Commander Williams, agent for mails on board the contract steamer Trent.

It appears from the letter of Commander Williams, dated "Royal Mail Contract Packet Trent, at Sea, November 9," that the Trent left Havanna on the 7th instant, with her Majesty's mails for England, having on board numerous passengers. Commander Williams states that shortly after noon on the 8th a steamer having the appearance of a man-of-war, but not showing colors, was observed ahead. On nearing her at 1,15 P. M. she fired a round shot from her pivot gun across the bows of the Trent, and showed American colors. While the Trent was approaching her slowly the American vessel discharged a shell across the bows of the Trent, exploding half a cable's length ahead. The Trent then stopped, and an officer with a large armed guard of marines boarded her. The officer demanded a list of the passengers; and, compliance with this demand being refused, the officer said he had orders to arrest Messrs. Mason, Slidell, Macfarland and Eustis, and that he had sure information of their being passengers in the Trent. While some parley was going on upon this matter Mr. Slidell stepped forward and told the American officer that the four persons he had named were then standing before him. The Commander of the Trent and Commander Williams protested against the act of taking by force out of the Trent these four passengers, then under the protection of the British flag. But the San Jacinto was at that time only two hundred yards from the Trent, her ship's company at quarters, her ports open, and tompions out. Resistance was therefore out of the question, and the four gentlemen before named were forcibly taken out of the ship. A further demand was made that the Commander of the Trent should proceed on board the San Jacinto, but he said he would not go unless forcibly compelled likewise, and this demand was not insisted upon.

It thus appears that certain individuals have been forcibly taken from on board a British vessel, the ship of a neutral Power, while such vessels was pursuing a lawful and innocent voyage—an act of violence which was an affront to the British flag and a violation of international law.

Her Majesty's Government, bearing in mind the friendly relations which have long subsisted between Great Britain and the United States, are willing to believe that the United States naval officer who committed the aggression was not acting in compliance with any authority from his Government, or that if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received. For the Government of the United States must be fully aware that the British Government could not allow such an affront to the national honor to pass without full reparation, and Her Majesty's Government are unwilling to believe that it could be the deliberate intention of the Government of the United States unnecessarily to force into discussion, between the two Governments, a question of so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

Her Majesty's Government, therefore, trust that when this matter shall have been brought under the consideration of the Government of the United States that Government will, of its own accord, offer to the British Government such redress as alone could satisfy the British nation, namely, the liberation of the four gentlemen and their delivery to your Lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed.

Should these terms not be offered by Mr. Seward you will propose them to him.

You are at liberty to read this dispatch to the Secretary of State, and, if he shall desire it you will give him a copy of it.

I am, &c., RUSSELL.

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE, WASHINGTON, Dec. 26, 1861.

The Right Honorable Lord Lyons, &c., &c., &c. :

My Lord—Earl Russell's despatch of November the 30th, a copy of which you have left with me at my request, is of the following effect, namely :

That a letter of Commander Williams, dated Royal Mail Contract Packet boat Trent, at sea, November 9th, states that that vessel left Havana on the 7th of November, with Her Majesty's mails for England, having on board numerous passengers. Shortly after noon, on the 8th of Novemuer, the United States was steamer San Jacinto, Captain Wilkes, not showing colors, was observed ahead. That steamer, on being neared by the Trent, at one o'clock fifteen minutes in the afternoon, fired a round shot from a pivot gun across her bows, and showed American colors. While the Trent was approaching slowly towards the San Jacinto she discharged a shell across the Trent's bows which exploded at half a cable's length before her. The Trent then stopped, and an officer with a large armed guard of marines boarded her. The officer said he had orders to arrest Messrs. Mason, Slidell, Macfarland and Eustis, and had sure information that they were passengers in the Trent. While some parley was going on upon this matter Mr. Slidell stepped forward and said to the American officer that the four persons he had named were standing before him. The Commander of the Trent and Commander Williams protested against the act, of taking those four passengers out of the Trent, they then being under the protection of the British flag. But the San Jacinto was at this time only two hundred yards distant, her ship's company at quarters, her ports open and tompions out, and so resistance was out of the question. The four persons before named were then forcibly taken out of the ship. A further demand was made that the Commander of the Trent should proceed on board the San Jacinto, but he said he would not go unless forcibly compelled likewise, and this demand was not insisted upon.

Upon this statement Earl Russell remarks that it thus appears that certain individuals have been forcibly taken on board a British vessel, the ship of a neutral power, while that vessel was pursuing a lawful and innocent voyage, an act of violence which was an affront to the British flag and a violation of international law.

Earl Russell next says that Her Majesty's Government, bearing in mind the friendly relations which have long existed between Great Britain and the United States, are willing to believe that the naval officer who committed this aggression was not acting in compliance with any authority from his Government, or that, if he conceived himself to be so authorized, he greatly misunderstood the instructions which he had received.

Earl Russell argues that the United States must be fully aware that the British Government could not allow such an affront to the national honor to pass without full reparation, and they are willing to believe that it could not be the deliberate intention of the Government of the United States unnecessarily to force into discussion between the two Governments a question of so grave a character, and with regard to which the whole British nation would be sure to entertain such unanimity of feeling.

Earl Russell, resting upon the statement and the argument which I have thus recited, closes with saying that Her Majesty's Government trusts that when this matter shall have been brought under the consideration of the United States it will, of its own accord, offer to the British Government such redress as alone could satisfy the British nation, namely, the liberation of the four prisoners taken from the Trent, and their delivery to your Lordship, in order that they may again be placed under British protection, and a suitable apology for the aggression which has been committed. Earl Russell finally instructs you to propose those terms to me, if I should not first offer them on the part of the Government.

This despatch has been submitted to the President.

The British Government has rightly conjectured, what it is now my duty to state, that Capt. Wilkes, in conceiving and executing the proceeding in question, acted upon his own suggestions of duty, without any direction or instruction, or even foreknowledge of it on the part of this Government. No directions had been given to him or any other naval officer, to arrest the four persons named, or any of them, on the Trent, or on any other British vessel, or on any other neutral vessel, at the place where it occurred or elsewhere. The British Government will justly infer from these facts that the United States not only had no purpose, but even no thought of forcing into discussion the question which has arisen, or any which could affect in any way the sensibilities of the British nation.

It is true that a round shot was fired by the San Jacinto from her pivot gun when the Trent was distantly approaching. But, as the facts have been reported to this Government, the shot was nevertheless intentionally fired in a direction so obviously divergent from the course of the Trent as to be quite as harmless as a blank shot, while it should be regarded as s signal.

So also we learn that the Trent was not approaching the San Jacinto slowly when the shell was fired across her bows, but, on the contrary, the Trent was, or seemed to be moving under a full head of steam, as if with a purpose to pass the San Jacinto.

We are informed also that the boarding officer (Lieutenant Fairfax) did not board the Trent with a large armed guard, but he left his marines in his boat when he entered the Trent. He states his instructions from Capt. Wilkes to search for the four persons named, in a respectful and courteous though decided manner, and he asked the Captain of the Trent to show his passenger list, which was refused. The Lieutenant, as we are informed, did not employ absolute force in transferring the passengers, but he used just so much as was necessary to satisfy the parties concerned that refusal or resistance would be unavailing.

So, also, we are informed that the Captain of the Trent was not at any time or in any way required to go on board the San Jacinto.

These modifications of the case as presented by Commander Williams are based upon our official reports.

I have now to remind your Lordship of some facts which doubtlessly were omitted by Earl Russell, with the very proper and becoming motive of allowing them to be brought into the case, on the part of the United States, in the way most satisfactory to this Government. These facts are that at the time the transaction occured an insurrection was existing in the United States which this Government was engaged in suppressing by the employment of land and naval forces; that in regard to this domestic strife the United States considered Great Britain as a friendly Power, while she had assumed for herself the attitude of a neutral; and that Spain was considered in the same light, and had assumed the same attiude as Great Britain.

It had been settled by correspondence that the United States and Great Britain mutually recognized as applicable to this local strife these two articles of the declarations by the Congress of Paris in 1856, namely that the neutral or friendly flag should cover enemy's goods not contraband of war, and that neutral goods not contraband of war are not liable to capture under an enemy's flag. These exceptions of contraband from favor where a negative acceptance by the parties of the rule hitherto everywhere recognized as a part of the law of nations, that whatever is contraband is liable to capture and confiscation in all cases.

James M. Mason and E. J. McFarland are citizens of the United States, and residents of Virginia. John Slidell and George Eustis are citizens of the United States and residents of Louisiana. It was well known at Havana when these parties embarked in the Trent that James M. Mason was proceeding to England in the affected character of a Minister Plenipotentiary to the Court of St. James, under a pretended commission from Jefferson Davis, who had assumed to be President of the insurrectionary party in the United States, and E. J. Mcfarland was going with him in a like unreal character of Secretary of Legation to the pretended mission. John Slidell, in similar circumstances, was going to Paris as a pretended Minister to the Emperor of the French, and George Eustis was the chosen Secretary of Legation for that simulated mission. The fact that these persons had assumed such characters has been since avowed by the same Jefferson Davis in a pretended message to an unlawful and insurrectionary Congress. It was we think, rightly presumed that these Ministers bore credentials and instructions, and such papers are in the law known as despatches. We are informed by our Consul at Paris that these despatches, having escaped the search of the Trent, were actually conveyed and delivered to emisaries of the insurrection in England. Although it is not essential, yet it is proper to state, as I do also upon information and belief, that the owner and agent, and all the officers of the Trent, including the Commander Williams, had knowledge of the assumed characters and purposes of the persons before named, when they embarked on that vessel.

Your lordship will now preceive that the cases before us, instead of presenting a merely flagrant act of violence on the part of Capt. Wilkes, as might well be inferred from the incomplete statement of it that went up to the British Government, was undertaken as a simple, legal, customary and beligerent proceeding by Capt. Wilkes to arrest and capture a neutral vessel engaged in carrying contraband of war for the use and benefit of the insurgents.

The question before us is whether this proceeding was authorized by and conducted according to the law of nations. It involves the following inquiries :

1st. Were the persons named and their supposed despatches contraband of war ?

2d. Might Capt. Wilkes lawfully stop and search the Trent for these contraband persons and despatches ?

3d. Did he exercise the right in a lawful and proper manner ?

4th. Having found the contraband persons on board and in presumed possession of the contraband despatches, had he a right to capture the persons ?

5th. Did he exercise that right of capture in the manner allowed and recognized by the law of nations ?

If all these inquiries shall be resolved in the affirmative the British Government will have no claim for reparation.

I address myself to the first inquiry, namely, were the four persons mentioned, and their supposed dispatches, contraband ?

Maritime law so generally deals, as its professors say, *in rem*, that is, with property, and so seldom with persons, that it seems a straining of the term contraband to apply it to them. But persons, as well as property, may become contraband, since the word means broadly "contrary to proclamation, prohibited, illegal, unlawful."

All writers and judges pronounce naval or military persons in the service of the enemy contraband. Vattel says war allows us to cut off from an enemy all his resources, and to hinder him from sending ministers to solicit assistance. And Sir William Scott says you may stop the ambassador of your enemy on his passage. Dispatches are not less clearly contraband, and the bearers or couriers who undertake th carry them fall under the same condemnation.

A subtlety might be raised whether pretended ministers of an usurping power, not recognized as legal by either the belligerent or the neutral, could be held to be contraband. But it would disappear on being subjected to what is the true test in all cases—namely, the spirit of the law. Sir William Scott, speaking of civil magistrates who were arrested and detained as contraband, says :

"It appears to me on principle to be but reasonable that when it is of sufficient importance to the enemy that such persons shall be sent out on the public service at the public expense, it should afford equal ground of forfeiture against the vessel that may be let out for a purpose so intimately connected with the hostile operations."

I trust that I have shown that the four persons who were taken from the Trent by Capt. Wilkes, and their despatches, were contraband of war.

The second inquiry is whether Capt. Wilkes had a right by the law of nations to detain and search the Trent ?

The Trent, though she carried mails, was a contract or merchant vessel—a common carrier for hire. Maritime law knows only three classes of vessels—vessels of war, revenue vessels, and merchant vessels. The Trent falls within the latter class. Whatever disputes have existed concerning a right of visitation or search in time of peace, none it is supposed, has existed in modern times about the right of a belligerent in time of war to capture contrabands in neutral and even friendly merchant vessels and of the right of visitation and search, in order to determine whether they are neutral, and are documented as such according to the law of nations.

I assume, in the present case, what, as I read British authorities, is regarded by Great Britain herself as true maratime law : that the circumstances that the Trent was proceeding from a neutral port to another neutral port does not modify the right of the belligerent captor.

The third question is whether Capt. Wilkes exercised the right of search in a lawful and proper manner ?

If any doubt hung over this point, as the case was presented in the statement of it adopted by the British Government, I think it must have already passed away before the modifications of that statement which I have already submitted.

I proceed to the fourth inquiry, namely :

Having found the suspected contraband of war on board the Trent, had Capt. Wilkes a right to capture the same ?

Such a capture is the chief, if not the only recognized object of a visitation and search. The principle of the law is that a belligerent exposed to danger may prevent the contraband person or thing from applying themselves or being applied to the hostile use or purpose designed. The law is so very liberal in this respect that when the contraband is found on board a neutral vessel, not only is the contraband forfeited, but the vessel, which is the vehicle of its passage or transportation, being tainted, also becomes contraband, and is subject to capture and confiscation.

Only the fifth question remains, namely : Did Capt. Wilkes exercise the right of capturing the contraband in conformity with the law of nations ?

It is just here that the difficulties of the case begin. What is the manner which the law of nations prescribes for disposing of the contraband when you have found and seized it on board of the neutral vessel? The answer would be easily found if the question were what you shall do with the contraband vessel. You must take or send her into a convenient port, and subject her to a judicial prosecution there in admiralty, which will try and decide the questions of belligerency, neutrality, contraband and capture. So, again, you would promptly find the same answer if the question were, What is the manner of proceeding prescribed by the law of nations in regard to the contraband if it be property or things of material or pecuniary value ?

But the question here concerns the mode of procedure in regard, not to the vessel that was carrying the contraband, nor yet to contraband things which worked the forfeiture of the vessel, but to contraband persons.

The books of law are dumb. Yet the question is as important as it is difficult. First, the belligerent coptor has a right to prevent the contraband officer, soldier, sailor, minister, or courier from proceeding in his unlawful voyage and reaching the destined scene of his injurious service. But on the other hand, the person captured may be innocent—that he may not be contraband. He, therefore, has a right to a fair trial of the accusation against him. The neutral State has taken him under its flag, is bound to protect him if he is not contraband, and is therefore entitled to be satisfied upon that important question. The faith of that State is pledged to his safety, if innocent, as its justice is pledged to his surrender if he is really contraband. Here are conflicting claims, involving personal liberty, life, honor, and duty. Here are conflicting national claims, involving welfare, safety, honor and empire. They require a tribunal and a trial. The captors and the captured are equals; the neutral and thn belligerent State are equals.

While the law authorities were found silent it was suggested at an early day by this Government that you should take the captured persons into a convenient port and institute judicial proceedings there to try the controversy. But only courts of admiralty have jurisdiction in maratime cases, and these courts have formulas to try only claims to contraband chattles, but no one to try claims concerning contraband persons. The courts can entertain no proceedings and render no judgment in favor of or against the alleged contraband men.

It was replied all this is true ; but you can reach in those courts a decision which will have the moral weight of a judicial one by a circuitous proceeding. Convey the suspected men, together with the suspected vessel, into port, and try there the question whether the vessel is contraband. You can prove it to be so by proving the suspected men to be contraband, and the court must then detetmine the vessel to be contraband. If the men are not contraband the vessel will escape condemnation. Still there is no judgmont for or against the captured persons. But it was assumed that there would result from the determination of the court concerning the vessel a legal certainty concerning the character of the men.

This course of proceeding seemed open to many objections. It elevates the incidental inferior private interest into the proper place of the paramount public one, and possibly it may make the fortunes, the safety, or the existence of a nation depend on the accidents of a merely personal and pecuniary litigation. Moreover, when the judgment of the prize court upon the lawfulness of the capture of the vessel is rendered, it really concludes nothing, and binds neither the belligerent State nor the neutral upon the great question of the disposition to be made of the captured contraband persons. That question is still to be really determined, if at all, by diplomatic arrangement or by war.

One may well express his surprise when told that the law of nations has furnished no more reasonable, practical, and perfect mode than this of determining questions of such grave import between sovereign powers. The regret we may feel on the occasion is nevertheless modified by the reflection that the difficulty is not altogether anomalous. Similar and equal deficiencies are found in every system of municipal law, especially in the system which exists in the greater portions of Great Britain and the United States. The title to personal property can hardly ever be resolved by a court without resorting to the fiction that the claimant has lost and the possessor has found it, and the title to real estate is disputed by real litigants under the names of imaginary persons. It must be confessed, however, that while all aggrieved nations demand, and all impartial ones concede, the need of some form of judicial process in determining the characters of contraband persons, no other form than the illogical and circuitous one thus described exists, nor has any other yet been suggested. Practically, therefore, the choice is between that judicial remedy or no judicial remedy whatever.

If there be no judicial remedy, the result is that the question must be determined by the captor himself, on the deck of the prize vessel. Very grave objections arise against such a course. The captor is armed, the neutral is unarmed. The captor is interested, prejudiced, and perhaps violent; the neutral, if truly neutral, is disinterested, subdued, and helpless. The tribunal is irresponsible, while its judgment is carried into instant execution. The captured party is compelled to submit, though bound by no legal, moral, or treaty obligation to acquiesce. Reparation is distant and problematical, and depends at last on the justice, magnanimity, or weakness of the State in whose behalf and by whose authority the capture was made. Out of these disputes reprisals and wars necessarily arise, and these are so frequent and destructive that it may well be doubted whether this form of remedy is not a greater social evil than all that could follow if the belligerent right of search were universally renounced and abolished forever. But carry the case one step farther. What if the State that has made the capture unreasonably refuse to hear the complaint of the neutral or to redress it? In that case, the very act of capture would be an act of war—of war begun without notice, and possibly entirely without provocation.

I think all unprejudiced minds will agree that, imperfect as the existing judicial remedy may be supposed to be, it would be, as a general practice, better to follow it than to adopt the summary one of leaving the decision with the captor, and relying upon diplomatic debates to review his decision. Practically, it is a question of choice between law, with its imperfections and delays, and war, mith its evils and desolations. Nor is it ever to be forgotten that neutrality, honestly and justly preserved, is always the harbinger of peace, and therefore, is the common interest of nations, which is only saying that it is the interest of humanity itself.

At the same time it is not to be denied that it may sometimes happen that the judicial remedy will become impossible, as by shipwreck of the prize vessel, or other circumstances which excuse the captor from sending or taking her into port for confiscation. In such a case the right of the captor to the custody of the captured persons and the right to dispose of them, if they are really contraband, so as to defeat their unlawful purposes, cannot reasonably be denied. What rule shall be applied in such a case ? Clearly, the captor ought to be required to show that the failure of the judicial remedy results from circumstances beyond his control, and without his fault. Otherwise he would be allowed to derive advantage from a wrongful act of his own.

In the present case Capt. Wilkes, after capturing the contraband persons and making prize of the Trent in what seems to us a perfectly lawful manner, instead of sending her into port, released her from the capture, and permitted her to proceed with her whole cargo on her voyage. He thus effectually prevented the judicifil examination which otherwise might have occurred.

If now, the capture of the contraband persons and the capture of the contraband vessel are to be regarded, not as two separate or distinct transactions under the law of nations, but as one transaction, one capture only, then it follows that the capture in this case was left unfinished or abandoned. Whether the United States have a right to retain the chief public benefits of it, namely the custody of the captured persons on proving them to be contraband, will depend upon the preliminary question whether the leaving of the transaction unfinished was nececsary, or whether it was unnecessary and therefore voluntary. If it was necessary, Great Britain, as we suppose, must waive the defect, and the consequent failure of the judicial remedy. On the other hand, it is not seen how the United States can insist upon her waiver of that judicial remedy, if the defect of the capture resulted from an act of Capt. Wilkes, which would be a fault on their own side.

Capt. Wilkes has presented to this Government his reasons for releasing the Trent. "I forbore to seize her," he says, "in consequence of my being so reduced in officers "and crew, and the derangement it would "cause innocent persons, there being a large "number of passengers who would have been "put to great loss and inconvenience, as well "as disappointment, from the interruption it "would have caused them in not being able "to join the steamer from St. Thomas to "Europe." I therefore concluded to sacrifice "the interests of my officers and crew in the "prize, and suffered her to proceed after the "detention necessary to effect the transfer of "those Commissioners, considering I had obtained the important end I had in view, and "which affected the interests of our country "and interrupted the action of that of the "Confederates."

I shall consider first, how these reasons ought to affect the action of this Government; and, secondly, how they ought to be expected to affect the action of Great Britain.

The reasons are satisfactory to this Government, so far as Captain Wilkes is concerned. It could not desire that the San Jacinto, her officers and crew, should be exposed to danger and loss by weakning their number to detach a prize crew to go on board the Trent. Still less could it disavow the humane motive of preventing inconveniences, losses, and perhaps disasters, to the several hundred innocent passengers found on board the prize vessel. Nor could this Government perceive any ground for questioning the fact that these reasons, though apparently congruous, did operate in the mind of Captain Wilkes and determine him to release the Trent. Human actions generally proceed upon mingled, and sometimes conflicting motives. He measured the sacrifices which this decision would cost. It manifestly, however, did not occur to him that beyond the sacrifice of the private interests (as he calls them) of his officers and crew, there might also possibly be a sacrifice even of the chief and public object of his capture—namely, the right of his Government to the custody and disposition of the captured persons. This government cannot censure him for this oversight. It confesses that the whole subject came unforseen upon the Government, as doubtless it did upon him. Its present convictions on the point in question are the result of deliberate examination and deduction now made, and not of any impressions previously formed.

Nevertheless, the question now is, not whether Capt. Wilkes is justified to his government in what he did, but what is the present view of the government as to the effect of what he has done. Assuming now, for argument's sake only, that the release of the Trent, if voluntary, involved a waiver of the claim of the government to hold the captured persons, the United States could in that case have no hesitation in saying that the act which has thus already been approved by the government must be allowed to draw its legal consequence after it. It is of the very nature of a gift or a charity that the giver cannot, after the exercise of his benevolence is past, recall or modify its benefits.

We are thus brought directly to the question whether we are entitled to regard the release of the Trent as involuntary, or whether we are obliged to consider that it was voluntary. Clearly the release would have been involuntary had it been made solely upon the first ground assigned for it by Capt. Wilkes, namely, a want of a sufficient force to send the prize vessel into port for adjudication. It is not the duty of a captor to hazard his own vessel in order to secure a judicial examination to the captured party. No large prize crew, however, is legally necessary, for it is the duty of the captured party to acquiesce and go willingly before the tribunal to whose jurisdiction it appeals. If the captured party indicate purposes to employ means of resistance which the captor cannot with probable safety to himself overcome, he may properly leave the vessel to go forward; and neither she nor the State she represents can ever afterwards justly object that the capture deprived her of the judicial remedy to which she was entitled.

But the second reason assigned by Captain Wilkes for releasing the Trent differs from the first. At best, therefore, it must be held that Capt. Wilkes. as he explains himself, acted from combined sentiments of prudence and generosity, and so that the release of the prize vessel was not strictly necessary or involuntary.

Secondly. How ought we to expect these explanations by Capt. Wilkes of his reasons for leaving the capture incomplete to effect the action of the British Government ?

The observation upon this point which first occurs is, that Capt. Wilkes explanations were not made to the authorities of the captured vessel. If made known to them they might have approved and taken the release, upon the condition of waiving a judicial investigation of the whole transaction, or they might have refused to accept the release upon that condition.

But the case is not one with them, but with the British Government. If we claim that Great Britain ought not to insist that a judicial trial has been lost because we voluntarily released the offending vessel out of consideration for her innocent passengers, I do not see how she is to be bound to acquiesce in the decision which was thus made by us without necessity on our part, and without the knowledge of conditions or consent on her own. The question between Great Britain and ourselves thus stated would be a question not of right and of law, but of favor to be conceded by her to us in return for favors shown by us to her, of the value of which favors on both sides we ourselves shall be the judge. Of course the United States could have no thought of raising such a question in any case.

I trust that I have shown to the satisfaction of the British Government, by a very simple and natural statement of the facts, and analysis of the law applicable to them, that this Government has neither meditated, nor practiced, nor approved any deliberate wrong in the transaction to which they have called its attention; and, on the contrary, that what has happened has been simply an inadvertency, consisting in a departure, by the naval officer, free from any wrongful motive, from a rule uncertainly established, and probably by the several parties concerned either imperfectly understood or entirely unknown. For this error the British Government has a right to expect the same reparation that we as an independent State, should expect from Great Britain or from any other friendly nation in a similar case.

I have not been unaware that, in examining this question, I have fallen into an argument for what seems to be the British side of it against my own country. But I am relieved from all embarrassments on that subject. I had hardly fallen into that line of argument, when I discovered that I was really defending and maintaining, not an exclusively British interest, but an old honored and cherished American cause, not upon British authorities, but upon principles that constitute a large portion of the distinctive policy by which the United States have developed the resources of a continent, and thus becoming a considerable maritime power, have won the respect and confidence of many nations. Those principles were laid down for us in 1804, by James Madison, when Secretary of State in the administration of Thomas Jefferson, in instructions, given to James Monroe, our Minister to England. Although the case before him concerned a description of persons different from those who are incidently the subjects of the present discussion, the ground assumed then was the same I now occupy, and the arguments by which he sustained himself upon it have been an inspiration to me in preparing this reply.

"Whenever," he says, "property found in a neutral vessel is supposed to be liable on any ground to capture or condemnation, the rule in all cases is, that the question shall not be decided by the captor, but be carried before a legal tribunal, where a regular trial may be had, and where the captor himself is liable to damages for an abuse of power. Can it be reasonable then, or just, that a belligerent commander who is thus restricted, and thus responsible in a case of mere property of trivial amount, should be permitted, without recurring to any tribunal whatever, to examine the crew of a neutral vessel, to decide the important question of their respective allegiances, and to carry that decision into execution by forcing every individual he may choose into a service abhorent to his feelings, cutting him off from his most tender connections, exposing his mind and his person to the most humiliating discipline, and his life itself to the greatest danger? Reason, justice, and humanity unite in protesting against so extravagant a proceeding."

If I decide this case in favor of my own Government, I must disavow its most cherished principle, and reverse and forever abandon its essential policy. The country cannot afford the sacrifice. If I maintain those principles and adhere to that policy, I must surrender the case itself. It will be seen, therefore, that this Government could not deny the justice of the claim presented to us in this respect upon its merits. We are asked to do to the British nation just what we have always insisted all nations ought to do to us.

The claim of the British Government is not made in a discourteous manner. This Government, since is first organization, has never used more guarded language in a similar case.

In coming to my conclusion I have not forgotton that, if the safety of this Union required the detention of the captured persons, it would be the right and duty of this Government to detain them. But the effectual check and wanting proportions of the existing insurrection, as well as the comparative unimportance of the captured persons themselves, when dispassionately weighed, happily forbid me from resorting to that defence.

Nor am I unaware that American citizens are not in any case to be unnecessarily surrendered for any purpose into the keeping of a foreign State. Only the captured persons however, or others who are interested in them, could justly raise a question on that ground.

Nor have I been tempted at all by suggestions that cases might be found in history where Great Britain refused to yield to other nations, and even to ourselves, claims like that which is now before us. Those cases occurred when Great Britain, as well as the United States was then the home of generations which, with all their peculiar interests and passions, have passed away. She could in no way so effectually disavow any such injury as we think she does by assuming now as her own the ground upon which we then stood. It would tell little for our own claims to the character of a just and magnanimous people if we should so far consent to be guided by the law of retaliation as to lift up buried injuries from their graves to oppose against what national consistency and the national conscience compel us to regard as a claim intrinsically right.

Putting behind me all suggestions of this kind, I prefer to express my satisfaction that by the adjustment of the present case upon principles confessedly American, and yet as I trust, mutually satisfactory to both of the na-

CONCLUDED ON FOURTH PAGE.