

ACCOMPANYING DOCUMENTS.

NEUTRAL RIGHTS.

Mr. Cass to Mr. Mason.

No. 190.]

DEPARTMENT OF STATE,
Washington, June 27, 1859.

SIR: The government of the United States has learned with much concern that a war has broken out in Europe which threatens in its progress to involve other powers, and to become one of the most eventful contests in which modern nations have found themselves engaged. The policy of the United States is essentially pacific, and upon the present occasion, as heretofore, they will faithfully discharge their neutral duties, determined, so far as depends upon themselves, to preserve the most amicable relations with all the powers engaged in hostilities. This determination will be communicated to each of those powers, and you will make it known to the government of his Imperial Majesty, and in doing so you will take care and express the confident expectation of the United States that their rights will be respected by France with equal fidelity. There is reason to apprehend that in the progress of the war questions affecting the rights of neutral nations upon the ocean may present themselves for consideration, and whose peaceable solution may require discretion as well as forbearance.

The tendency of modern civilization and improvement is to mitigate the calamities of war, and the progress of opinion has introduced important meliorations into the mode of its prosecution, especially upon land; but unfortunately similar beneficent changes have not been admitted into maritime war, so that the code which regulates these contests yet contains principles of action not adapted to the sentiments of the age in which we live. It is desirable that, by the general consent of independent powers, modifications should be made in these objectionable principles, so as to accommodate them to the existing state of things, and also that the rights of belligerent nations should be restrained within reasonable limits and defined with due precision.

This dispatch will make known to you the views of this government concerning these subjects; and it is deemed important that they should be communicated to the powers of Europe principally interested in the weighty questions they involve, and that each of those powers should be requested, not only to coöperate in the effort to accomplish this good work, but also zealously to exert its influence with other states to induce them to concur in the proposed measure, which appeals by so many grave considerations to the feelings and judgment of the age. The various representations of the United States to the European nations will, upon all fitting occasions, explain these views to the governments to which they are accredited, and will invoke their aid towards the attainment of the objects indicated, and at the same time they will communicate for their information the views entertained by

this country of those points of international law presented in this letter, which the United States consider established, and entitled to the support of all other powers.

You are desired to carry into effect these instructions at the Imperial Court of France, and to keep this department informed from time to time of the progress and prospects of this attempt to restrict the evils of war, and to enlarge and secure the blessings of peace.

It is obvious that the commercial powers of the world regard with no little solicitude the subject of neutral rights; and there is a general apprehension that pretensions may be advanced during the existing war which may imperil them. And it is equally obvious, from the temper of the age, that the present is no safe time to assert and enforce pretensions on the part of belligerent powers, affecting the interest of nations at peace, unless such pretensions are clearly justified by the law of nations. Although some of the provisions of that code have become harsh and unacceptable, yet there is a general sense of the duty of submitting to the obligations it imposes. But those obligations to ensure obedience must depend, not upon doubtful construction, but upon clearly expressed language, defining with reasonable precision the rights and duties of the independent parties in the relations existing between them. It is unfortunate that various claims have been advanced and enforced by belligerent powers in the prosecution of wars for which it would be vain to seek any sufficient justification in the law of nations, and this consideration adds to the importance of some acceptable arrangement by which this source of apprehension may be removed, and all danger of collision avoided by clearly defining the rights of the parties in all doubtful cases. If the belligerent powers should substitute their own views for the fair provisions of the general law, the most serious consequences may be apprehended. It becomes all prudent governments engaged in hostilities to take into consideration the actual condition of public sentiment whenever measures of doubtful character are proposed, and satisfy themselves not only that they are also practically expedient.

There are three principal subjects connected with the rights of belligerent and neutral powers which require the dispassionate consideration of all governments desirous of preventing the most serious complications. These relate to the condition of an enemy's property found on board the vessel of a friend, and to the system of blockades and contraband of war. With respect to the two last, the United States consider it of the utmost importance that they should be so regulated and defined by general consent as to leave no doubt respecting the questions they embrace, when these call for practical adjustment.

With respect to the protection of the vessel and cargo by the flag which waves over them, the United States look upon that principle as established, and they maintain that belligerent property on board a neutral ship is not liable to capture, and from existing indications they hope to receive the general concurrence of all commercial powers in this position. Whatever difference of opinion may have heretofore prevailed upon this subject, it is certain that the claim forcibly to enter a neutral vessel and to seize the goods found there, upon the

allegation of their being the property of an enemy, was first urged at a period when the passions of belligerents were little restrained by the dictates of humanity or religion, and when the question how an enemy could be injured, or rather how his goods could be seized, was a much more acceptable object of research than why a friend should be spared. Almost from the first attempt to incorporate this doctrine into the maritime code of the world, it has been denounced by eminent publicists as fallacious in principle and unjust and dangerous in practice. And the repugnance to it has gone on increasing till its advocates have almost disappeared. I believe that every modern commercial nation has practically repudiated it by entering into treaty stipulations, either temporary or permanent, providing for its abandonment, and some of them, as the Baltic states, by the league known as the armed neutrality, and by forcible resistance. The opposition of Holland to it has been almost unremitted. The principal powers engaged in the Crimean war, Great Britain, France and Russia, by formal public declarations avowed their adherence to the doctrine of immunity and their determination to respect it, France and Russia absolutely and without limitation of time, and Great Britain "for the present," but for a reason equally applicable to all times hereafter, and which will at all times call for similar concurrence. This measure is adopted, says the British declaration, "to preserve the commerce of neutrals from all unnecessary obstruction," &c. Experience has well shown the justice of this designation and the wisdom of this precautionary arrangement. No disposition has been manifested by any of the states relinquishing this pretension to resume its exercise, nor is it to be expected that if such an effort were made it would be tamely submitted to. Contested and invidious powers are not to be thus authoritatively abandoned and then again called into service, at the interest or caprice of any nation. The countries engaged in the pending war have adopted a much wiser policy. They hold on to the power of the flag to protect both vessel and cargo from all violation, and have proclaimed by public declarations their determination to respect the principle of exemption so happily established. And well is it in the general interest, that this tribute has been rendered to the opinions of the age. The stopping of neutral vessels upon the high seas, their forcible entrance and the overhauling and examination of their cargoes, the seizure of their freight at the will of a foreign officer, the frequent interruption of their voyages by compelling them to change their destination in order to seek redress, and, above all, the assumption of jurisdiction by a foreign armed party over what has been aptly termed the extension of the territory of an independent state, and with all the abuses which are so prone to accompany the exercise of unlimited power, where responsibility is remote; these are indeed serious "obstructions," little likely to be submitted to in the present state of the world without a formidable effort to prevent them. Such pretensions necessarily lead to the establishment of a police upon the great highway of nation, to the transfer of jurisdiction over its own vessels from the country to which it belongs to other powers, who may exercise it for their own purposes. Far better would it be to encourage the freest system of commercial intercourse, both in peace and war,

than to encounter the calamities, which would be sure at this day to attend the attempt to revive claim to *obstruct* the trade of the world. This government is satisfied that no such design is meditated, and under the circumstances the United States feel justified in considering the freedom of neutral vessels from interruption, when carrying belligerent property, an established principle of intercommunication which ought to be respected as such by all commercial nations.

But there is another aspect under which this subject presents itself, and which confirms this government in the resolution it has formed and in the expectation that other powers will cordially concur in its views. By the declaration of the Paris conference, in its sitting of April 16, 1856, it was announced on behalf of all the states who might become parties to that act that "the neutral flag covers enemy's goods, with the exception of contraband of war."

This mutual agreement protects the property of each of those states, when engaged in hostilities, from capture on board a neutral vessel, by an enemy a party to the same act. It is not necessary, that a neutral should have announced its adherence to this declaration in order to entitle its vessels to the immunity promised; because the privilege of being protected is guaranteed to belligerents, coparties to that memorable act, and protects their property from capture whenever it is found on board a vessel belonging to a nation not engaged in hostilities. Were it otherwise, a very grave question would arise for the consideration of the government of the United States. The carrying trade is a branch of employment to all neutral commercial powers. It is peculiarly so to this country from the enterprise of its citizens, and from the facility with which they devote themselves to the pursuits of navigation. While conceding the authority of belligerent nations to relax the rigid principles of war, so far as regards their own rights, and to exempt other powers from penalties which might be enforced, but for such concession, whether this is done for a consideration or without it, those neutral nations which are prevented from being parties to such an arrangement have a right to insist that it shall not necessarily work to their injury. This dictate of justice would be palpably violated in the case of the United States, should this protecting clause of the Paris conference not enable their vessels, when neutral, to shield from capture the property of belligerents carried as freight. Such an immunity withheld from this country would, in fact, operate as a premium granted to other nations, and would be almost destructive of that important branch of our national industry, the carrying trade. It ought not to be expected that this country would quietly acquiesce in such an invidious distinction, and the expectation, if indulged, would be sure to be disappointed. The United States, indeed, declined to become a party to the Paris conference, though that circumstance does not affect the position they occupy. They did so for the most satisfactory reasons, because the propositions were not divisible, and because they were required to surrender a mode of maritime warfare peculiarly adapted to their condition and pursuits, and essential to their defense upon the ocean. It was not that the propositions went too far, but because they did not go far enough, that this country felt it to be its duty to withhold its concurrence from the

acts of the conference. It concedes, however, that while claiming to participate as a neutral power in this exemption, it is bound when a belligerent power to respect the same principle, recognizing its general obligation. As far as reasonably practicable the evils of war should be confined to the parties engaged in it, and neutral nations have a right to demand that their interests should not be affected unless when brought into contact with hostile operations fairly adapted to promote the submission of an enemy. This just barrier against the passions of nations has found little practical favor in the progress of their dissensions, and the result has been the introduction of other causes of trouble, which it were wise to examine calmly, with a view to avert the serious consequences which may be anticipated if no such effort is made. The system of blockades and the doctrine and practice touching contraband of war have been fertile sources of these difficulties, not only in consequence of the vague and contradictory manner in which the subjects are considered, as well in judicial decisions as in received treaties, by elementary writers upon public law, but also in consequence of their peculiarly offensive character, and of the irritation they are sure to produce.

Almost infinite have been the questions to which these subjects, more especially those relating to contraband of war, have given rise, and human ingenuity has been exhausted in efforts to reconcile the unlimited seizure of neutral property and its appropriation to the purposes of the captors with established principles, loose as they too often are, which, while they recognize certain rights of belligerents, impose reasonable restrictions upon their exercise, in the expectation, vain it is too often found, of preventing their abuse. But the contest has been an unequal and a losing one between the power of confiscation and appropriation and the prohibition of the international code, appealing for its sanctions only to the consciences of nations.

The blockade of an enemy's coast, in order to prevent all intercourse with neutral powers, even for the most peaceful purpose, is a claim which gains no additional strength by an investigation into the foundation on which it rests, and the evils which have accompanied its exercise call for an efficient remedy. The investment of a place by sea and land, with a view to its reduction, preventing it from receiving supplies of men and material necessary for its defense, is a legitimate mode of prosecuting hostilities which cannot be objected to so long as war is recognized as an arbiter of national disputes. But the blockade of a coast, or of commercial positions along it, without any regard to ulterior military operations, and with the real design of carrying on a war against trade, and, from its very nature, against the trade of peaceable and friendly powers, instead of a war against armed men, is a proceeding which it is difficult to reconcile with reason or with the opinions of modern times. To watch every creek and river and harbor upon an ocean frontier, in order to seize and confiscate every vessel, with its cargo, attempting to enter or go out without any direct effect upon the true objects of war, is a mode of conducting hostilities which would find few advocates, if not now first presented for consideration. Unfortunately, however, the right to do this has been long recognized by the law of nations, accompanied, indeed, with precautionary condi-

tions, intended to prevent abuse, but which experience has shown to be lamentably inoperative. It is very desirable, therefore, that this constant source of irritation in time of war should be guarded against, and the power to interrupt all intercourse with extensive regions be limited and precisely defined, before, by a necessary reaction, its exercise is met by an armed resistance.

There can be no reasonable doubt but the original theory of blockades was in conformity with the views herein suggested; that is, they were considered as military means to reduce invested places, and upon this narrow foundation the immense superstructure which now overshadows the commercial intercourse of the world has been erected from time to time by belligerent powers for their own purposes. One of the most eminent juriconsults of this country, both in character and position, Judge Marshall, when Secretary of State, in his instructions dated September 30, 1800, to Mr. King, then our minister at London, lends his high authority to this view of the subject. "On principle," he said, "it might well be questioned whether this rule can be applied to a place not completely invested by land as well as by sea. If we examine the reasoning on which is founded the right to intercept and confiscate supplies designed for a blockaded town, it will be difficult to resist the conviction that its extension to towns invested by sea only is an unjustifiable encroachment on the rights of neutrals."

The elementary writers abound with expressions indicating a close connection between blockades and sieges. Vattel defines the right of a party blockading or besieging a place to treat as an enemy any one who attempts to enter such place or to carry anything to the besieged. And Lord Stowell, when speaking of a blockading force as a besieging force, borrowed language which had been thus previously used, and which left no doubt of its origin.

But Lord Stowell has borne yet more direct testimony to the correctness of these suggestions. In a case decided by him, he said a blockade is "a sort of circumvallation by which all correspondence and communication is, as far as human force can effect it, effectually cut off," &c.

It would be difficult for language to express with more precision the true character of blockades and the object to which they are properly applicable, the reduction of invested places.

The restriction of blockades to the proper purposes of war would remove at once from the field of controversy the vast variety of questions with which it is now encumbered, and which are sure to present themselves, peaceably or forcibly, as soon as a maritime war breaks out.

I have no disposition to undertake even their bare enumeration, for it would be a work of labor, beginning at the inquiry, when does a blockade rightfully commence, and ending with an equally important and sometimes difficult one, when does it terminate? And it would embrace all the intermediate questions which have been discussed with wonderful subtlety, and by whose aid and immense amount of property belonging to friendly merchants has been transferred from the peaceable owners to the armed captors. Such an enumeration, however,

brief though it might be, would exhibit, in a striking point of view, the uncertainty which rests upon this subject, and how much the questions that arise depend, not upon well-established principles, but upon the discretion, the will, indeed, of the party interested in the extension of the system of confiscation. But the principal subject of controversy relates to the extent of the force by which a blockade must be maintained in order to be lawful. The received law of nations requires that the force shall be an adequate one, and the Paris conference fortified this requisition, or, in other words, gave in their adhesion to it, by incorporating it into their declaration. But experience has shown how inefficient is such an injunction to stay the aggressive spirit of belligerents, and the history of paper blockades constitutes a memorable and most instructive chapter in the annals of modern warfare. Whole countries have been declared in a state of blockade with as much apparent confidence in the justice of the measure as if their coasts could be hermetically closed by a single armed cruiser. If blockades were confined to places actually invested, this source of dispute would disappear, for it would be in the interest of the investing power to support its operations with a sufficient force in order to bring the enterprise to a speedy termination.

The doctrine of contraband of war has been another prolific subject of dispute and animosity in the progress of the hostilities which have latterly disturbed the tranquillity of the world. It is a rule touching the intercourse of nations which, even if divested of the uncertainty which surrounds it, and renders it a most dangerous instrument of mischief, would still be entitled to no favorable consideration. It should, therefore, be permitted to do as little injury as may be to the commerce of the world, and should be rigidly confined within the narrowest limits compatible with an honest belligerent policy, and, in the opinion of this government, those limits ought to be made to include only arms and munitions of war. As a means of annoyance, this international prohibition against carrying to a country engaged in hostilities articles useful for military purposes is practically of little value to its enemy. It found its way into the code of nations when the means of supply were much more restricted than at present, and before the progress of improvement had placed it in the power of almost every nation to provide itself with whatever it may want, either for offensive or defensive operations. No state will ever be reduced because its enemy may have it in his power to seize and confiscate supplies under the name of contraband of war. Unfortunately, if the value of this restriction as a means of military annoyance has passed away, it is still valuable for a different purpose. Blockades and contraband, even when enforced in strict conformity with the law of nations, give to belligerent powers the control of a vast amount of property, enabling them to convert much of it to their own use. But such a guarded exercise of their privileges is a rare event at almost all times, and often the limitations provided by the international law are palpably disregarded; and at such periods there are few of the articles of commerce which belligerent powers do not interfere with, even to their seizure and condemnation, under one pretext or another. By these means the whole trade of the world is placed in jeopardy,

and an indisposition to relinquish this formidable power, which it may be anticipated will be needed hereafter, probably contributes far more to the tenacity with which it is held on to than the professed purposes to which it owed its introduction into the maritime code of nations. These circumstances indicating the dangers which, during war, beset all the nations not taking part in it, indicate also the necessity for their joint concurrence in any reasonable effort to preserve the just rights of the world.

The law of contraband is lamentably vague, and it is hardly possible that an extensive war should prevail upon the ocean for any considerable period without an attempt on the part of the belligerents to draw into the class of contraband articles of general consumption, which, in the opinion of neutral powers, are liable to no such association; and the day is rapidly coming, if it has not already come, when such encroachments will be prevented, at the expense, if necessary, of an armed opposition. The signs of the times are not to be misunderstood, and ought not to be disregarded. Independent of the want of adaptation of this interdiction upon the commerce of the world to its avowed objects, owing to the improvement in the general power of production and supply, there are serious evils to which it is exposed, and which result from the entire neglect of precision, of reasonable caution, indeed, in the manner in which the subject is treated in the received expositions of the law of nations. There is no accepted enumeration of the articles coming within the prohibition. And to add to the dangers of collision, the principle by which they are to be tested is so loosely defined, that it is practically of little use but to furnish a pretext, when one is wanting, to enable parties at war to enlarge the contraband list at their pleasure. Some of the later and approved writers upon the law of nations, as Hautefeuille and Ortolan, object to this power of extension *ad libitum*, and the former particularly confines the list to objects of first necessity for war, and which are exclusively useful in its prosecution, and which can be directly employed for that purpose without undergoing any change—that is to say, to arms and munitions of war. In this absence of specific enumeration, and of a clear fixed principle, there is no method provided by which the disputes, inseparable from this state of things, may be amicably adjusted; and the evils are therefore so obvious, that able commentators upon national law have proposed that special treaties be formed between nations, whenever practicable, in order to regulate these embarrassing questions, and thus obviate, in some degree, dangers which in war must be always imminent. The United States have adopted this policy, and have omitted no favorable opportunity of carrying it into effect. They have entered into conventional arrangements with most of the other independent states of America, viz: with Brazil, Chile, Venezuela, Ecuador, New Granada, Guatemala, San Salvador, Peru, and Mexico, and with some of the principal commercial powers of Europe, for the better regulation of these difficult questions; and in all cases it has been their object to circumscribe as much as possible the catalogue of prohibited articles, and to provide, by specific enumeration, against the recurrence of abuses, which have given so much just cause of complaint. But these partial arrange-

ments, though useful as far as they go, are yet a very inadequate remedy for the evil, because they establish no uniform rule, each treaty prescribing its own regulations, and because they apply only to the parties themselves, leaving their relations in this respect with other powers to be governed by the code which has proved itself so unworthy of confidence.

The dictum upon which this whole doctrine rests is, that a neutral nation ought not to supply a belligerent power with articles which may serve him in the direct prosecution of hostilities. If this prohibitory declaration had been confined to arms and munitions of war, there would have been little difficulty in the fair adjustment of the questions which might arise under it. But it presents no such tangible limit on the one hand, while on the other it is conceded that it does not embrace various articles, as clothing, and, I may add, provisions, which are as assential to the efficiency of the soldier as the arms he bears into battle. What, then, must be the effect of any article upon warlike operations to authorize its classification as contraband of war, is a question which has provoked as much angry discussion as any other with which modern nations have had to deal. Besides the difficulty arising out of the want of precision in the terms employed, and probably not less out of the absence of any generally fixed views, there is yet another which adds further to the embarrassment, and which requires the immediate consideration of the parties to the law of nations. This question of contraband is a shifting one, as Lord Erskine expressed it, embracing new articles from time to time as they become applicable to military purposes, when the law shifts to accommodate itself to these progressive improvements in the implements or means of destruction. But still the nature of such improvements, and the just title of the articles contributing towards them to take their places in the list of contraband, is a subject of controversy, which is liable to be followed by the most serious consequences. The discussion which at this time is going on respecting the military character of coal, and whether it is now excluded from general commerce as contraband of war, is a striking illustration of the tendency to enlarge this power of prohibition and seizure, and of the necessity of watching its exercise with unabated vigilance. Here is an article, not exclusively nor even principally used in war, but which enters into general consumption in the arts of peace, to which indeed it is now vitally necessary. It has become also important in commercial navigation. It is a product of nature with which some regions are bountifully supplied, while others are destitute of it, and its transportation, instead of meeting with impediments, should be aided and encouraged. The attempt to enable belligerent nations to prevent all trade in this most valuable accessory to mechanical power has no just claim for support in the law of nations, and the United States avow their determination to oppose it so far as their vessels are concerned.

It adds to the complications arising out of the uncertainty in which this subject is involved, that there is no common tribunal empowered to decide between the independent parties when a belligerent nation, interested in the measure, undertakes to add a new article to the catalogue of contraband upon the assumption that it has changed its char-

Mr. Black enters fully into details of the assassination and imprisonment of citizens of the United States. * * * *

I have the honor to be, sir, very respectfully, your obedient servant,
ROBERT M. McLANE.

Hon. LEWIS CASS,
Secretary of State, Washington City.

A.

CONSULATE OF THE UNITED STATES OF AMERICA,
Mexico, May 1, 1859.

SIR: I had the honor of addressing you on the 18th ultimo by the English courier, through the legation, in answer to your official communication of the 7th of same, and one of the 26th ultimo; received yours of 19th of same, relating to the case of Morris Toussig, who had previously been placed at liberty on bail.

Things remain here yet in a most dreadful condition; arbitrary arrests and imprisonments are daily taking place, notwithstanding the five Americans mentioned in my note of the 18th ultimo have been set at liberty without any explanation, not having any charges preferred against them or even grounds for charges; their names are as follows: Michael McDonnell, George Garrie, Robert Bryant, C. Chamberlain, and Michael McCarty; the latter lately arrived from California by way of Acapulco, arrived in this city on the 13th of April, with the proper passports from the Mexican authorities. On his taking quarters at an hotel, before he had time to change himself, he was seized, with his passports and other documents establishing his good character on his person, which were taken from him by the chief of police, Legarde, and committing him to prison without any examination, though it appears, from the confession of the authorities, that the cause of his apprehension and imprisonment was his having a blouse shirt on; and there is no doubt if the road for this person to enter this city had led through Tacubaya, he would have been seized there and shot immediately, without any investigation or remedy.

It appears by the list of the names of the sixteen persons who were shot at Tacubaya on the evening of the 11th of April, there were three Americans, two doctors, to wit: John Duval, said to be an Englishman by birth but a citizen of the United States, having come there quite young; the other, a native born, named Albert Lamon; the other Ignacio Richie; some say that he also was a doctor, though this fact is not clearly ascertained. It is also known that when General Marquez entered the hospital where these doctors were in the act of making amputations, that he promised and said they need not fear, they would be safe; notwithstanding, they were led out and shot in the evening at about seven o'clock. Doctor Duval had on his person about two hundred dollars in gold; after they were shot they were stripped of everything even to their stockings.

General Marquez has left here some time since, it is said, with from

two to three thousand men to march against Morelia; others think it is only a feint, that he does not intend to go there, but will remain about Toluca.

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I have the honor to be, with great respect, your obedient servant,
JOHN BLACK.

Hon. ROBERT M. McLANE,
*Envoy Extraordinary and Minister Plenipotentiary of the
United States near the Constitutional Government, Vera Cruz.*

THE MEMORIAL OF CHARLES P. STONE.

The Hon. the Secretary of State of the United States, Washington, D. C.:

Your petitioner, a citizen of the United States, respectfully represents that he has been employed during the past twenty months in conducting the survey and exploration of the coasts of the Gulf of California and the public lands in the adjoining Mexican territory, under a contract made by the general government of Mexico, for the purpose, with a foreign house in Mexico, which house has interested with them certain American citizens and others. That nearly all the officers and men employed by him in the survey are American citizens, and that a very large amount of capital belonging to Americans has been in good faith invested in the enterprise.

That your petitioner was careful to avoid any act on his own part, and to prevent any act on the part of those under his control, which might have been offensive to the laws of the country, or which might cause any collision between him and his party and the local authorities in power.

That all under your petitioner's orders were solemnly bound by engagements, written and sworn, to obey and respect the laws of the land, and not to engage in or assist any unlawful undertaking against Mexico or any of her states.

That by purchase and discovery, according to Mexican law, your petitioner, his comrades and their employés became possessed of considerable property in lands, mines, &c., within the states of Sonora and Sinaloa, the care of which property and its development required the personal attention of your petitioner and his comrades; and had they been permitted peaceably to remain and enjoy the rights guaranteed to them by existing treaties, these possessions would have become of great value to them. That, aside from the general survey, your petitioner's services as a civil engineer were in frequent demand by the people of the country, and could he have remained there he would have received large sums of money for those services.

That while pursuing a perfectly lawful course, without any act of resistance to any local authority, and without any intention of it, your petitioner and his comrades were suddenly ordered, on the 18th day of May, 1859, to quit the territory of the Mexican States of Sonora and Sinaloa within the term of forty days; said order having been

transmitted and enforced by the prefect of Guaymas, acting under the written instructions of Don Ignacio Pesquiera, governor, dated Mazatlan, April 17, 1859.

That this order gave no sufficient reason for such violent action, and failed to charge the slightest offense against law or authority on your petitioner or any of his comrades.

That your petitioner and his comrades yielded immediate obedience to the order, rather than assume a position of violent opposition to authority, and at great expense, and with heavy sacrifice, retired from the states of Sonora and Sinaloa, abandoning such interests as could not, in the short space of time allowed, be disposed of.

Your petitioner incloses herewith a copy of his letter to the prefect in reply to the order of expulsion, and a copy of the form of engagement sworn to by his men.

He also respectfully refers to the protest made at the time of expulsion by the United States consul at Guaymas, which is now on file in the State Department.

Your petitioner further represents that previous to his order of expulsion Governor Pesquiera had assumed to prohibit the execution of the survey as far as the public lands of Sonora were involved, disregarding the orders of the general government of Mexico, which required the local authorities to aid and assist your petitioner in his labors. That in your petitioner's belief such action on the governor's part was illegal and unjust, but that this has nothing to do with the subject here presented, which is the violent expulsion of American citizens in time of peace from Mexican territory, contrary to treaty stipulations.

Your petitioner further represents that up to the time of expulsion no opposition had ever been made by said governor to your petitioner's operations in the state of Sinaloa as distinguished from the state of Sonora.

And your petitioner prays that such action may be taken in the matter by the government of his native country as may by that government be deemed proper and necessary for the maintenance of treaty stipulations and the safety of the rights of your petitioner and his comrades.

And your petitioner will ever pray, etc.

CHAS. P. STONE.

WASHINGTON, D. C., August 25, 1859.

SURVEY OF SONORA, OFFICE OF CHIEF OF COMMISSION,
Guaymas, May 18, 1859.

SIR: I have to acknowledge the receipt this evening of your honor's respected letter of yesterday's date, inserting an order from his excellency the governor to the effect that your honor shall cause *S. Carlos P. Stone*, and the other persons composing the commission, &c., to leave the states of Sonora and Sinaloa within a prudent term. I also notice that your honor prescribes the term of forty days within which

said order must be complied with, and desires me to communicate said order to the various members of this commission.

The desired communication has already been made to such members as are now present, and will be speedily communicated to such as are absent.

Although I and my comrades are fully sensible of having strictly complied with the laws of the land during our residence here, of having done nothing which could, in any manner, have justified complaint against us, either by the authorities or people of the state; although fully aware that his excellency the governor has exceeded his powers in thus ordering foreigners from the country; although fully aware that the order is in open violation of the solemn treaty between the government of Mexico and that of the country of which I have the honor to be a citizen; although compliance with this order will insure heavy pecuniary loss upon myself and others, yet, following the peaceful course we have ever pursued, and wishing not to add anything to the present disturbed condition of affairs in the state, I and my comrades will promptly retire from a country of which the governor retracts the hospitality which, thirteen months since, he voluntarily offered in an official communication published to the world; and we abandon the interests for which we have, while residing here, trusting in the promises of his excellency and the solemn stipulations of treaties between our country and Mexico, expended our money and our labor.

That we may be able with dispatch and peacefully to return to our country, I respectfully request that your honor will be pleased to issue to me a passport, for myself and twenty-five companions, hence to the northern limits of Sonora.

Taking this occasion to thank your honor and large numbers of the people of Sonora for the very many acts of personal kindness received by us at your and their hands, I subscribe myself, with much respect, your honor's most obedient servant,

CHS. P. STONE.

Hon. the PREFECT OF THE DISTRICT OF GUAYMAS.

Form of engagement.

No. ——. SURVEY OF SONORA.

I, ———, acknowledge that I have this day engaged to serve in the commission for the survey of the public lands in the state of Sonora, republic of Mexico, under the articles of organization of said commission, duly executed in San Francisco, California, on the 9th day of May, A. D. 1857, for the term of one year, unless sooner discharged; and do agree to accept such monthly pay (not less than ——— dollars) and such rations as may be prescribed by the present or future chief of commission.

And I, ———, do solemnly swear that I will and truly obey the orders of the chief of commission and of the officers set over me, according to the regulations of said commission, with all the exactitude

required in subordinates in the armies of the United States of America. *And do further swear*, that I will obey and respect the laws of the republic of Mexico and of the state of Sonora, and will not engage in or assist any unlawful expedition against the government of Mexico during my service in Mexican territory.

(Signed)

Sworn and subscribed before me, this — day of —, A. D. —

[Signature of notary or consul.]

Mr. La Reintrie to Mr. Cass.

No. 38.]

UNITED STATES LEGATION,
Vera Cruz, September 24, 1859.

SIR: I have the honor to inclose to you a copy, marked A, of a letter, under date of the 17th instant, addressed to me by John Black, esq., United States consul for the city of Mexico, together with the circular therein referred to, issued by the Miramon faction, now in power at the capital.

The infractions contained in this decree are so fully set forth in the letter of Consul Black, and, upon a comparison of its provisions with the stipulations of the treaty of April 5, 1831, between the United States and Mexico, will be found so fully sustained, that I deem it unnecessary, under my instructions, to add anything to his remarks.

The relation which the government of the United States holds towards Miramon and his party is of a nature to forbid any step on my part, even were I authorized to do so, without first consulting the views and wishes of the government; and I therefore submit the subject to your consideration for such action and instructions as you may judge wise in the premises.

I am, sir, very respectfully, your obedient servant,

HENRY ROY DE LA REINTRIE,
Secretary in charge of U. S. Legation.

Hon. LEWIS CASS,
Secretary of State, Washington, D. C.

A, with No. 38.

CONSULATE OF THE UNITED STATES OF AMERICA,
Mexico, September 17, 1859.

SIR: I had the honor of addressing you on the 12th instant, and now inclose to you herewith an extraordinary decree or circular issued by this government, dated the 31st of August last, and published in the "Diario Oficial" of the 12th instant, as you will see by the inclosure relative to the administration of justice in cases where foreigners may be parties.

The decree in question seeks to establish a different administration of justice for foreigners to that which is conceded to Mexicans, and is a direct infraction of articles 14th and 25th of our treaty, as giving power to the government to interfere and interrupt the ordinary action of the judicial tribunals by its intervention in all suits, both civil and criminal, in which foreigners are or may be parties. In many of these suits the government itself may be a party, and interested in the result.

It is currently reported here that letters have been received, both from Vera Cruz and the United States, by the extraordinary which arrived here on the 15th instant, stating that Mr. Lerdo had completely succeeded in his negotiations at Washington; that a sale had been made to the United States of Sonora and Lower California, for thirty millions of dollars. We have, on the other hand, all this contradicted.

I also inclose herewith the "Diario Oficial," of the 16th instant, containing the oration delivered here on that day—the anniversary in commemoration of the "Glorioso Grito de Dolores."

It is said the cabinet is to be changed; that Peza is to leave the finance department, and that Diaz, the minister of justice, is to take his place; that General Blanco is to take the war department, and the old contributions are to be done away with, and others imposed; and some think it is the intention of Miramon, in place of going to Vera Cruz, to change his course and go into the interior. I have just been informed that Coronado has taken Tepic, and has shot Moreno; but I cannot vouch for its truth.

I am, with great respect, your obedient servant,

JOHN BLACK. [Rubric.]

HON. HENRY ROY DE LA REINTRIE,
*Secretary of the United States Legation,
in charge of the same, Vera Cruz.*

[Translation.]

DEPARTMENT OF JUSTICE, ECCLESIASTICAL AFFAIRS AND PUBLIC INSTRUCTION

Circular.

Until the regulations respecting the functions of the public administration, exercised by the attorney general of the nation in causes in which it is to intervene by way of modeling the proceedings, shall be definitively issued, his excellency, the substitute president of the republic, has been pleased, in virtue of the powers with which he is invested, to decree that the following rules shall be observed:

ARTICLE 1. In order to provide perfectly for the safety of international relations, to guard against every violation of public and private international right, and to prevent complaints and reclamations on the part of foreigners against the government of the republic, and

to afford to these the greatest security in the trial and determination of civil and criminal causes in which they are interested, the public administration, committed to the attorney general of the nation and to his subordinates, shall intervene by way of modeling the proceedings, and as a joint party in the affairs which are mentioned in the two first sections of article 153 of the law of the 29th of November, 1858.

ARTICLE 2. In the causes and matters spoken of in the first section of the said article, which affect treaties, or which directly affect international relations, the public administration shall intervene whether the suit be between Mexicans or foreign private persons, companies or corporations, in case that it has not to intervene by way of action and as a principal party.

ARTICLE 3. In the causes and matters treated of in the second section of the said article, in which foreign subjects may be a party, the public administration shall participate, whether the suit is with Mexicans or that all the litigants are foreigners, whether there be one or many plaintiffs or defendants, provided that the supreme government of the republic so orders.

ARTICLE 4. The public administration shall intervene in the affairs spoken of in the present law, whether they occur in the courts of common jurisdiction or in any of the privileged ones; in all the demands and appeals which may arise in the respective suits, whether the suits be plenary, summary, or most summary, provided they are for a large amount, since in verbal suits, criminal suits for slight offences, or civil suits for a small amount, the intervention shall not take place.

ARTICLE 5. The intervention shall be exercised before the supreme courts by the attorney general of the nation; before the superior courts by the attorneys for the treasury, who reside in the place where the court which tries the matter is held; before the judges of first instance by the attorneys for the treasury, who reside in the place where the court is held; and where there is none such by the officer of the highest rank in the treasury department, who resides in the place where the respective court is held.

ARTICLE 6. In order that said intervention may take place in the matters treated of in article 2d of this ordinance, all the inferior and superior courts in which they arise shall notify the appropriate agent of the public administration according to the preceding article, giving him for a period of three days a copy of the civil and criminal process, or of the respective report of proceedings, in order that he alone may then make himself acquainted with the affair, and receive or ask of his respective superior reasonable instructions, and afterwards act as is provided for in article 15 of this ordinance.

ARTICLE 7. The notification and copy of proceedings provided for in the preceding article shall be given immediately after the answer in the suit of it is between parties, and after the plea to the accusations in causes which are officially prosecuted.

ARTICLE 8. When, in the beginning of a suit, its connection with treaties or with international relations is not perceived, the notification provided for in the preceding articles shall be made as soon as such

connection shall be discovered, even though it be at the time of rendering judgment; in which event, for better provision, it shall be put in practice.

ARTICLE 9. In order that the public administration may intervene in the affairs treated of in article 3, it shall be sufficient that the inferior or superior court, at any stage of the cause, receives a written order from the supreme government to give the public administration a hearing, or that one of its functionaries shall present a similar order for it to intervene in the matter.

ARTICLE 10. To the end that the supreme government may have knowledge of the causes of this kind which arise, and that it may determine on intervention when it shall deem this suitable, all the courts and tribunals of the republic, common and privileged, superior and inferior, shall be under the strictest obligation to give notice in writing to the supreme government, through the office of relations and through the regular channels, of all civil and criminal causes which may come before them in which foreign subjects may be a party; stating the interest which is involved, the amount thereof if it should be known, the persons who are litigating, and their nationality.

ARTICLE 11. Said notice of criminal causes shall be given immediately after the commitment for reason, or immediately after the deposition of there being grounds for the formation of a cause; and that of civil causes immediately after the answer to the complaint, or after the exception offered to no answer being made. It shall be transmitted without loss of mail and without impediment to other notices that, in conformity to law, must be given of the formation of processes.

ARTICLE 12. The inferior and superior courts shall not wait for any reply to the prescribed notice in order that they may continue and decide the respective matters.

ARTICLE 13. When they receive an order to give intervention to the public administration, they shall order the state of the case and copy of proceedings, provided for in article 6 of this law, as soon as the circumstances of the affair will permit; but these shall never interrupt the exercise of any judicial formality, nor any one of the periods of limitation or postponements of the suits.

ARTICLE 14. In all affairs in which the public administration may have to intervene agreeably to this law, the respective functionary can be present, if he wishes, at the pleadings which the parties may make in their right, and can make use of speech in the same manner as the judges do; to which effect he shall always be notified in the writ which assigns a day for the trial.

ARTICLE 15. On the allegations and replies of the parties being concluded, whether the process has to be decided incidentally or finally, the proceedings shall be sent, in the first instance, to the functionary who intervenes for the public administration for a period of time equal to that which is allowed to the parties to allege as well proved, and in like manner for that which is allowed to counsel to prepare themselves; which period being concluded, he shall present an opinion conformable to justice and to the state of the cause.

ARTICLE 16. The opinion ought to fulfil the following purposes: 1st. To claim the strict observance of the laws which regulate procedure,

and to ask the rigorous imposition of the penalties incurred by those who may have infringed them in the process, taking care to do so with the greatest scrupulousness in regard to the postponements or delays which give rise to arrests or arbitrary imprisonments; 2d. To present, under their true point of view, the facts relating to the controversy; 3d. To bring to mind the provisions of the law applicable to the case under discussion; 4th. To throw light on all questions of fact and of law leading to the determination of the cause, explaining, in clear and technical terms, those petitions which the parties may have made in an implied manner, but without in any wise extending the solicitations of the contestants.

ARTICLE 17. When the public administration intervenes as a joint party, it will not enter into discussion with the litigants, and, therefore, it shall not have any share in the modeling of the process; and it shall not be able to make petitions, nor to interpose appeals, nor to interfere with the exercise of judicial formalities; nor shall a transcript of its opinion be given to the interested parties, who only can see it, and a view of it cannot be refused them at the respective office.

ARTICLE 18. In these suits, the period of time appointed for the judges and courts to render their interlocutory and definitive judgments shall run from the day and hour in which the functionary of the public administration who may intervene shall present his opinion; to which effect he may be compelled as in all other cases.

ARTICLE 19. This opinion cannot fail to be read entirely by the judges and courts to whom it is presented, nor to be taken into consideration in the judgments; nor shall mention fail to be made in the judgment of its reading, and the grounds upon which their conclusion may rest. The omission of this mention shall be a reason for nullifying such judgment, which only can be demanded by the party who feels himself aggrieved by it and in whose favor the opinion may be.

ARTICLE 20. In these suits every judgment must be notified to the functionary who may have represented the public administration, with a view to the ulterior proceedings which it may befit the public interest to take; to which end, the notified functionary may ask attestation of the judgment, and of such other of the documents in the trial as he may deem proper; which shall be furnished to him without fees and without delay, even before the cause is concluded.

ARTICLE 21. The public administration shall use in these suits the sealed paper which is used in the civil controversies in which the public treasury is a party.

ARTICLE 22. In these suits no one of the officers in the public administration can be rejected, but he shall be held as forcibly hindered, and can be excused from performing his duties in those suits in which he might fall under an imputation of partiality, for the reasons in virtue of which judges can be excused and rejected.

ARTICLE 23. The functionaries of the public administration, in the suits in which it is to intervene by way of modeling the proceedings, are under an obligation to observe the same circumspection and secrecy which are imposed on the judges, so long as they have not drawn up and signed their opinion.

ARTICLE 24. The intervention of the public administration in the

causes and matters treated of in the present ordinance is necessary and indeclinable; and the omission of it, besides making the superior judge, inferior judge, or functionary, who may have failed to afford it, or who may have refused, or in any manner hindered it, personally responsible, shall be a reason of nullity, as is the omission of notification and hearing of one of the parties, agreeably to the first part of article 434 of the law of the 29th of November, 1858.

ARTICLE 25. In the appeals for nullity to which the provisions of articles 19 and 25 of this ordinance may give rise, the rules laid down in chapter 2, title 10, of the said law of the 29th of November, 1858, are rigorously applicable; although it be a question of affairs subject to the special jurisdiction of privileged courts.

TRANSITORY.

ARTICLE 26. In regard to causes which are already pending, and which are to be considered as comprised in this ordinance, in the State in which they are, whatever that may be, fulfillment shall be given to articles 6 and 10 of the same.

And I communicate this to you for your information, and for the consequent purposes.

God and liberty. Mexico, August 31, 1859.

DIAZ.

A copy.

MARIANO ALEGNÁ.

No. 7.]

DEPARTMENT OF STATE,
Washington, December 2, 1859.

SIR: Your dispatches to No. 14, inclusive, have been received.

The department has perused, with much satisfaction, the interesting report accompanying your No. 13, in relation to Guatemala, its political divisions, natural resources, commerce, &c., and has not failed to notice the industry and discernment requisite for the compilation of so valuable a mass of information. The maps and the box of vegetable tallow transmitted with the dispatch have safely been received. The latter, with an extract from your report, has been deposited in the Patent Office.

The department would be pleased to learn from you what sum would be deemed a satisfactory compensation to the gentleman who prepared the maps referred to.

In relation to the leave of absence solicited in your No. 13, to take effect from the close of the coming February, I need now only remark that it is hoped my last dispatch, October 1, directing you to repair to Comayagua, has reached you ere this, and that in the change of residence involved in that movement you will find an alleviation of the unfavorable symptoms in your physical condition which seem to require a different air. In the meantime, I trust that you will be

enabled to report so satisfactorily in regard to affairs in Honduras that, before the time you have mentioned, the department will have no reason to withhold the leave you have requested in order to arrange your domestic affairs.

I am, sir, &c.,

LEWIS CASS.

BEVERLY L. CLARKE, Esq., &c., &c., &c.

Mr. La Reintrie to Mr. Cass.

No. 47.]

UNITED STATES LEGATION,
Vera Cruz, November 5, 1859.

SIR: I have the honor to transmit herewith copies marked A, B, C, D, E, the first four from John Black, esq., United States consul at Mexico, and the last is my reply acknowledging their receipt.

Among these you will find the deposition (B) of J. W. Hale relating to the murder of Ormond Chase, which I was unable to forward by the "Tennessee," on the 22d instant, in consequence of the delay on the part of the courier from Mexico, which reached Vera Cruz at one o'clock of the same day, the steamer having left at 8 a. m.

As I have received no instructions from the department in reference to this case, which I have already reported, and looking every moment for the return of Mr. McLane, I have not addressed the constitutional government on the subject; but still I have not failed verbally to call their attention to this murder, and to ask that this government should manifest its reprobation of such a wanton act of cruelty on the part of Marquez and his deputy, Moreno.

By this mail I forwarded you the circular of Mr. Fuente, the minister of foreign affairs, under date of the 26th ultimo, showing the action of the Juarez government in reference thereto, but must say, in all truth, that although they evince every disposition to do justice to the United States, and to punish hereafter the assassin Marquez, I do not and cannot see how they will accomplish their aim without the direct assistance of the United States.

I am, sir, very respectfully, your obedient servant,

HENRY ROY DE LA REINTRIE,
Secretary in charge of United States Legation.

Hon. LEWIS CASS,
Secretary of State, Washington, D. C.

A, with No. 47.

CONSULATE OF THE UNITED STATES OF AMERICA,
Mexico, October 18, 1859.

SIR: I had the honor of addressing to you a few lines on the 10th instant, and on the 14th of receiving your esteemed favor of the 12th,

and now inclose to you herewith the deposition of Mr. Joseph W. Hale, although it is not the thing I had reason to expect from him from his former statements to myself and others, and even of his letter addressed to me under date of the 5th instant, a copy of which was transmitted to you in my letter of the 7th. I was in hopes he would have strengthened in place of weakening the facts therein stated, but the whole drift of his deposition appeared to be to avoid stating clearly that the illegal and inhuman execution of poor Chase was by order of General Marquez, as he had before stated on various occasions. No doubt worked upon by interested parties here, making him believe that the government here have an eye upon him and may seize and imprison him, and if not, that he would be at the mercy of Marquez when on his return to Tepic, I have endeavored to persuade him that by shrinking from manfully performing his duty in this affair he was more likely to bring danger not only on himself, but others also.

Mr. Mathew tells me he has addressed the government here on the subject of this execution some days since, but has not as yet had an answer. He has had in his possession the letter addressed to Mr. Barron by Mr. Allsopp, the English vice-consul at Tepic, part of which has reference to this affair. The letter is not official, and given to him in confidence.

I inclose herewith a copy of a letter of yesterday's date addressed to Mr. Mathew, inclosing to him a copy of Mr. Hale's deposition.

It is said here by some that General Marquez has marched against Colima, and that it is his intention to take possession of the port of Manzanillo; others say that he goes to Tepic to recover that place from the constitutionalists. It is very difficult to know anything positive. It would be well, however, that some of our men-of-war on that coast should be advised to look out for him, and demand a fair and full investigation of the matter relative to the case of Mr. Ormond Chase.

Mr. Hale's deposition was prepared and drawn up by himself, with the greatest caution, in his own handwriting, presented, subscribed, and sworn to without any alteration.

I have the honor to be, with great respect, your obedient servant,
JOHN BLACK. [A Rubric.]

Hon. HENRY ROY DE LA REINTRIE,
Secretary, in charge of the United States Legation, Vera Cruz.

B, with 47.

Personally appeared before me, John Black, consul of the United States at the city of Mexico, on this fourteenth day of October, 1859, Joseph W. Hale, a citizen of the United States, and being duly sworn deposes and says, that he is a resident of and doing business at Tepic, in the State of Jalisco, at present in the city of Mexico on business; and being requested to give the information he possesses in regard to the execution at Tepic of Mr. Ormond Chase, an American citizen, further deposes and says, that Ormond Chase was a citizen of the

United States, born near the city of Portland, in the State of Maine, where his father's family resides, as he himself represented; that about two years ago he came from San Francisco, California, having been engaged by an agent of deponent's as a suitable person to take charge of the "San Lorenzo" steam saw-mill, as sawyer, (that being his profession,) situated at Santiago, about ten leagues from Tepic, and the same distance from the port of San Blas, and where said Chase resided with his family, which he brought with him; and that he was afterwards employed as engineer and sawyer, performing his duties to the satisfaction of deponent; and that in the early part of July last the federal troops passed through Santiago, from Mazatlan, on their way to Tepic, of which place they took possession, and Mr. Chase having heard that much confusion prevailed there in consequence of the misconduct of the lower classes of the people and the disorderly troops, and the mill having been stopped in consequence of the low state of the river for rafting logs, he came to Tepic about the middle of the month, in company with Mr. Thomas W. Perkins, an English gentleman, and deponent's general agent at Santiago, stating, on his arrival, that they had come up for the purpose of protecting deponent's house and himself against any acts of violence to which he might be exposed, and other foreign houses. A few hours afterwards a battle was commenced, at night, and fought by the contending parties, and the following morning deponent's house was attacked by a mob and some disorderly soldiers, where I had merchandise stored to a considerable amount, some of which belonged to merchants of the place of the conservative party, with whom, as well as other merchants of the place, deponent had commercial dealings, and for which reason it was said the attack was made. Mr. Chase, by his courage and reasonable persuasions, at that time saved the deponent's house from being forcibly entered, as he did some days afterwards after another battle, which had lasted all night, when it was again threatened by a mob; that in cases where robberies had been committed by disorderly persons, unbeknown to the principal officers then in command of the place, he exerted himself in such a manner that the property taken was promptly restored to the owners.

Towards the latter part of the same month it was reported and understood at Tepic that General Marquez was marching from Guadalajara on the place with a superior force, and it was also reported that the federal troops would evacuate the town, and that, before doing so, a general sacking of the same might take place, and that the house of Messrs. Bairon, Forbes & Co., in which was the British consulate, was marked as among the first to be assaulted, for it had been reported at Tepic, although falsely so, as is now well known there, that John F. Allopp, esq., the acting consul, and agent for said house, had fired from the top of his house against the federal troops soon after they entered the place. On this account he was advised by his friends to retire with his family from the town and the dangerous position he was considered to be in, to which he at first objected, stating that, as he had no one to leave in charge, and would not consent to close the house, he would remain and abide the result. Mr. Chase hearing of this, and being aware of the danger to which he and his family were

exposed, volunteered his services to take charge of the same, assuring him that if he would allow him a small force he would protect it, in any event, against all harm, which proposal Mr. Allsopp accepted, and Mr. Chase remained in charge for some days, and until the federal troops had retired, which they did without offering any violence to the house; after which the government forces under General Marquez entered and took possession of the place. Mr. Allsopp then returned with his family to Tepic, and he and deponent advised Mr. Chase, on account of the unsafe state of the roads, and his wife having followed him from Santiago in consequence of the disturbed state of affairs there, to remain a few days longer, before returning to the mill.

During this time, whilst walking one evening in the square, he was suddenly arrested and imprisoned, for reasons entirely unknown to the deponent, and allowed no communication with any persons; and during this imprisonment he was required to make some declarations, and Mr. Allsopp was chosen by him as his interpreter, who afterwards informed deponent that in the course of this examination he offered to give satisfactory security for the good conduct and person of Chase during his trial if he could be allowed the liberty of the town, which was refused, for reasons unknown to him, as also to deponent. A day or two afterwards he was taken with the government troops about halfway to Guadalajara, and again brought back and imprisoned at Tepic, when deponent was informed that in consequence of some declarations that had been made against him he was to be expelled from the country, of which Chase was informed, and here the matter was considered, both by Mr. Allsopp and deponent, as settled; but two days afterwards, which was on the 7th day of August, at about ten o'clock in the day, deponent, to his great astonishment, was informed by Mr. Allsopp that he had just been told that Chase had been shot the same morning, at 4 o'clock, and was hung upon a tree a short distance below the town.

What the nature of the declarations was that were made against Chase, or the forms of the examinations in his case, or the crime he had committed, for which he was condemned to death, the deponent does not know, not having learned previous to his leaving Tepic, which was on the 2d of September last; and further deponent sayeth not.

JOS. W. HALE.

Sworn and subscribed the 14th day of October, A. D. 1859, before me.

JOHN BLACK, [A Rubric.]
United States Consul.

No. 186.

CONSULATE OF THE UNITED STATES OF AMERICA,
Mexico, October 17, 1859.

I, the undersigned, consul of the United States of America for the city of Mexico, hereby certify that I have carefully examined and com-

pared the foregoing document with the original deposition, filed in this consulate, and that it is a correct and true copy of the same. (Register I, folio 65.)

In testimony whereof, I have hereunto set my hand, and annexed
[L. s.] the consular seal, the day and year first before written.

[A Rubric.]

JOHN BLACK, [A Rubric.]
United States Consul.

C, with No. 47.

CONSULATE OF THE UNITED STATES OF AMERICA,
Mexico, October 17, 1859.

SIR: I have the honor to inclose to you herewith a copy of the deposition of Joseph W. Hale, relating to the imprisonment and murderous execution of Mr. Ormond Chase, an American citizen, at Tepic, on the 7th of August last, said to be by order of General Marquez.

I presume that the government in this capital have now full and positive information in relation to this affair, as it is natural to suppose that the case has been officially reported to the same, as the Mexican authorities alone are in possession of all the proceedings, which appear to have been secret and *ex parte*, denying to the prisoner the proper right of defense.

I have the honor to be, with great respect, your obedient servant,
JOHN BLACK. [A Rubric.]

Hon. GEORGE B. MATHEW,
Secretary, in charge of the British Legation, Mexico.

VERIFICATION OF NATIONALITY OF SHIPPING.

List.

- Mr. Dallas to Mr. Cass, with inclosures, December 16, 1858, extract.
- Same to same, with an inclosure, December 24, 1858, extracts.
- Memorandum from the Count de Sartiges, translation.
- The Count de Sartiges to Mr. Cass, December 26, 1858, translation.
- Mr. Cass to the Count de Sartiges, January 25, 1859, copy.
- Lord Napier to Mr. Cass, with an inclosure, February 3, 1859, copy.
- Mr. Cass to Mr. Dallas, February 23, 1859, copy.
- Lord Napier to Mr. Cass, with an inclosure, March 12, 1859, copy.
- The Count de Sartiges to same, March 12, 1859, translation.
- Mr. Cass to Mr. Dallas, March 15, 1859, copy.
- Mr. Dallas to Mr. Cass, March 18, 1859, extract.
- British and French naval instructions, March 23, 1859, copy.
- The Count de Sartiges to Mr. Cass, May 9, 1859, translation.
- Lord Lyons to same, May 9, 1859, copy.
- Mr. Cass to Lord Lyons, May 12, 1859, copy.
- Same to the Count de Sartiges, May 12, 1859, copy.

Memorandum from Lord Lyons, May 14, 1859, copy.
 Mr. Cass to Mr. Dallas, May 14, 1859, copy.
 Same to Lord Lyons, with an inclosure, July 18, 1859, copy.
 Same to Mr. Dallas, July 23, 1859, copy.

Mr. Dallas to Mr. Cass.

[Extract.]

No. 145.]

LEGATION OF THE UNITED STATES,
London, December 16, 1858.

SIR: I have the honor to transmit the copy of a note and its annexes received by me yesterday from her Majesty's principal secretary of state for foreign affairs.

* * * * *

I have the honor to be, sir, your most obedient servant,
 G. M. DALLAS.

Hon. LEWIS CASS,
Secretary of State.

FOREIGN OFFICE, *December 14, 1858.*

SIR: The question of the use of the American flag for purposes connected with the slave-trade has repeatedly led to communications between her Majesty's government and that of the United States.

Her Majesty's government, however deeply they may have felt the sacred obligations which have led this country to take so earnest a part in endeavoring to suppress this horrible traffic, have equally felt that they were bound to regard the just rights of other nations, and to abstain, unless permitted by treaty, from interfering authoritatively with suspected vessels provided with legitimate papers and hoisting corresponding national flags.

The communication which I had the honor to make to you on the 8th of June last will have proved to your government that the views above expressed have been acted upon in all sincerity; but it is with the deepest pain that I have to call your attention to facts which disclose the advantage taken of the admission by Great Britain of the international rights of other countries.

The accompanying extracts of a letter from Commodore Wise, the senior British naval officer on the west coast of Africa, detail circumstances calculated to move the most prejudiced feelings in regard to the question of the right of visit, and to urge the most decided measures for the suppression of proceedings which must be held to be equivalent to the grossest acts of piracy.

Her Majesty's government cannot for a moment doubt that equally with themselves the government of the United States will view with horror the prostitution of the American flag to such vile purposes.

They must believe that the government of the United States will be prepared to vindicate the honor of their flag by repudiating acts calculated to lower it in the estimation of civilized nations, and by taking

effectual steps to prevent its being thus debased by traffickers in human flesh.

The government of the United States have maintained that they are able and determined to preserve the police of the seas in so far as the American flag is concerned. They have engaged by the treaty with this country of the 9th of August, 1842, to maintain a force on the coast of Africa sufficient to control proceedings such as those which form the subject of this note. The naval officers of the two countries, when they have met on that coast, have happily been on the most friendly terms. But the force employed by the United States has manifestly been insufficient for the great object in view.

I earnestly entreat you, sir, to call the most serious attention of your government to these considerations.

I address you in the full conviction that the spirit in which I make this communication will not be misunderstood, and that it may be calculated to induce a kindred nation to act, not merely in accordance with treaty engagements, but with vigor and determination, and side by side with Great Britain, in vindication of the imperative rights of humanity.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

MALMESBURY.

G. M. DALLAS, Esq., &c., &c., &c.

Extracts of a report from Commodore Wise to the Secretary to the Admiralty, dated "Vesuvius," off Lagos, October 28, 1858.

In my letter of the 26th of August last I had the honor of bringing before their lordships' notice two most glaring instances of the prostitution of the American flag, particularly in the case of the "Ellen," of New York, boarded by Commander Truscott, of the "Heron," when slave deck and other fittings for the slave-trade were found on board, but as her papers clearly showed her right to the flag of the United States she was not further interfered with.

It is now my duty to report that the "Ellen" a few days later ascended the Congo, when she was visited by Commander Bowden, of the "Medusa," who ascertained that her papers were correct. She subsequently descended that river, and with her cargo of slaves on board, cooped up and dying, under close locked hatches, the "Ellen," of New York, under the American flag, boldly passed her Majesty's ship "Medusa." When the "Ellen" was visited, on passing, the stench sufficiently indicated that numerous human wretches were stowed below, and the reports from Punta da Lenha confirmed the opinion; but further examination was strictly forbidden, and as the right of the "Ellen" to the flag of America had been proved on two occasions, she was permitted to sail without molestation, with her rich cargo of death, disease, and misery.

Nor is the "Ellen" a solitary instance. A few days previously the American yacht "Wanderer" ascended the river, laid her slave deck, and proceeded to cruise in the offing till her slaves were collected, and is by this, probably, halfway to Cuba.

The case of the "Venus" has been reported; similar cases are frequently occurring. On the south coast slaves are procurable in thousands; the natives are selling their own children, and the traffic in slaves is rapidly destroying legal trade. These ill effects are produced by the shameful prostitution of the American flag, for under that ensign alone is the slave-trade now conducted.

From the master of the "Rufus Soulé," captured by her Majesty's ship "Viper" on the 11th of October, when about to ship, at Banda Point, some interesting information was obtained, the chief of which was that the "Rufus Soulé" was, to all intents and purposes, a Spanish ship; her real captain and crew were Spanish; the nominal captain was an American, as was also another man, who died from the ill-treatment he received from the Spanish crew. The American captain, by his own confession, was merely a tool in the hands of the Spaniards to carry out the farce of her being a legal American trader. That her registry was correct, was proved on two occasions when boarded by the "Viper." The master of the "Rufus Soulé" repeatedly stated that her registry was correct, but voluntarily destroyed the ship's papers and surrendered the vessel, as without nationality, to escape assassination by the Spaniards; or, to use his own words, "from the time he was out of Matanzas, in Cuba, his life was not worth 50 cents."

I avail myself of this opportunity to furnish you with a list, for their lordships' information, of slavers which are said to have sailed from the coast during the year 1857, and to the latest dates. My informants are tolerably trustworthy.

Their lordships will observe that out of the 23 vessels said to have escaped, 11 were repeatedly visited by her Majesty's cruisers, but though known to be slavers, they were necessarily left unmolested through their being bona fide American vessels. Had we a treaty with the United States, every one of these vessels would have been captured; and if the right of detaining American slavers to hand them over to their own cruisers was acknowledged, I have no hesitation in saying that the slave-trade would be entirely suppressed in three years.

On the other hand, if the present system is permitted much longer, I feel convinced that every pirate in the universe possessing the requisite means will, under the protection of the American flag, openly ship their slaves in sight of a British cruiser, knowing that we have no legal right to molest them in any way.

Last year slavers were (in the majority of cases) captured through their captains foregoing the protection of the American flag, but now American slavers are arriving and sailing with almost as much impunity as if they were engaged in legal trade.

In the coming year I feel convinced that the most vigorous efforts will be made by the transatlantic slave dealers; and if they extend their enterprise to the Bights of Benin and Biafra, farewell to the remunerative and rapidly increasing trade which is now carried on on that coast.

The above are painful truths, but must necessarily be disclosed.

Information of full slavers escaped in 1857 and up to September, in 1858.

Place where shipped.	Name of slaver.	Number of slaves.	Remarks.
1857.			
South coast.....	Brig W. D. Adams.....	600	Repeatedly visited by her Majesty's cruisers.
Do.....	Brig R. B. Lawton.....	600	Do. do.
Do.....	Brig Nancy.....	600	Do. do.
Do.....	Brig Putnam.....	600	Do. do.
Snake's Head.....	Barque Pays.....	700	Taken in Cuba.
Do.....	Brigantine Crimea.....	700	Repeatedly visited by her Majesty's cruisers.
Praya dos Pescadores.....	Brig Telegraph.....	600	Do. do.
Landano.....	Barque Petrel.....	650	Taken in Cuba.
Killoo.....	Barque Spirit of '76.....	700	Do.
Loango.....	A Spanish brig, supposed the Frank.....	550	Do.
Aghway.....	Barque Vesta.....	450	Repeatedly visited by her Majesty's cruisers.
Whydah.....	Schooner James Buchanan.....	300	Do. do.
1858.			
Northward of Mayumba.....	Schooner Merchant.....	600	In January visited by her Majesty's ship Conflict.
Longabouda.....	Brig, (Spanish,) name unknown, Señor Musquito, master.	800	Escaped in March.
Banda Point.....	Brig Telegraph.....	700	Escaped in June.
Killongo.....	Brigantine William Montague.....	500	In June two vessels shipped the number stated, supposed to be the vessels named.
Do.....	Schooner Blooming Youth.....	400	
Do.....	Ship Trovador.....	1,100	Escaped in July.
Do.....	Brig Putnam.....	700	Captured by U. S. vessel-of-war Dolphin, off Cuba.
Praya dos Pescadores.....	Brig Charlotte.....	550	Repeatedly visited by her Majesty's cruisers.
Not known, said to be north of the Congo..	Barque Venus.....	800	Escaped in July.
South coast.....	Brigantine Ellen.....	350	Boarded repeatedly by her Majesty's ship Medusa, with the slaves on board, in September.
In the Congo, cruising in the offing.....	Yacht Wanderer.....	*600	Repeatedly visited by her Majesty's cruisers.

* Deck laid for this number.

Abstract.

	Slavers.	Slaves.
Captured in the year 1857 and to the latest dates by her Majesty's cruisers and Portuguese cruisers on west coast of Africa	33	1,501
Escaped in 1857 and to the latest dates.....	23	14,210
Deduct captured off Cuba.....	4	2,750
	<hr/>	
Total escaped and cargoes landed in Cuba in 1857 and to September, 1858.....	19	11,460
	<hr/>	
Loss on middle passage to be deducted.		

CHARLES WISE,
Commodore and Senior Officer, West Coast of Africa.

Mr. Dallas to Mr. Cass.

[Extracts.]

No. 146.]

LEGATION OF THE UNITED STATES,
London, December 24, 1858.

SIR: I have had the honor to receive your Nos. 142 and 143, the former covering the original letter written by Commander James Hunt of her Britannic Majesty's sloop "Alecto" to Captain Bradford Gibbs, of the American brig "Caroline."

* * * * *

Since addressing you on the 16th instant, I have thought it proper to acknowledge the note from Lord Malmesbury sending me the "extracts of letters of Commodore Wise," forwarded to you with No. 145. This was done on the 19th instant, and the copy is subjoined. The next day I had the high gratification to receive the message transmitted by the President to Congress on the first day of its present session. This document apprises me that you have not yet been furnished with the promised projet for verifying the genuineness of the mercantile flag.

* * * * *

I have the honor to be, sir, your most obedient servant,
G. M. DALLAS.

Hon. LEWIS CASS,
Secretary of State.

LEGATION OF THE UNITED STATES,
London, December 19, 1858.

MY LORD: I beg leave to acknowledge the receipt of the note which your lordship did me the honor to address to me on the 14th instant,

accompanied by extracts of a letter from Commodore Wise, the senior British naval officer on the west coast of Africa.

The frequency with which the American flag is counterfeited as a cover for the traffic most impressively denounced and punished by American law, created in the government of the United States equal indignation and pain. They have specially endeavored since the 9th of August, 1842, to prevent these frauds and outrages by executing a plan of action adjusted at that time by treaty. A coöperation of naval squadrons, each armed with not less than eighty guns and mutually independent, was then deemed adequate by both countries to vindicate their respective penal enactments against the slave trade. It was begun and has been steadily continued. Sixteen years of trial, while certainly accomplishing much for the cause of humanity, would seem, according to the report of Commodore Wise, to close with a manifestation of the futility of the arrangement—a futility not imputable in the least degree to the neglect or lukewarmness of either of the governments or their agents, but solely to the audacity of guilty men, who, in this, as in all other spheres, while absorbed in the lust of gain, disregard the dignity of nations and screen iniquities by whatever means they can devise to forge.

Without at present considering whether there may not be other modes of augmenting the efficiency of the plan provided by the Webster and Ashburton treaty, I receive with the greatest respect your lordship's suggestion that the force employed by the United States and prescribed by the treaty has manifestly been insufficient for the great object in view. And I have hastened to transmit to Washington your lordship's communication, in order to obtain upon that point the views of my government.

Begging your lordship to accept the assurance of my most distinguished consideration, I have the honor to be, your lordship's most obedient servant,

G. M. DALLAS.

The right honorable the EARL OF MALMESBURY, &c., &c., &c.

Memorandum from the Count de Sartiges.

[Translation.]

By virtue of the immunity of flags, every merchant vessel sailing on the high seas is free from all foreign jurisdiction. An armed vessel cannot, therefore, visit, detain, arrest, and seize any but such merchant vessels as it ascertains to belong to the same nation to which the armed vessel itself belongs.

The flag being *prima facie* the distinguishing sign of the nationality of a vessel, and consequently that which establishes the jurisdiction to which it belongs, it is natural for a merchant vessel on the high seas, when in sight of an armed public vessel, to run up its flag in order to vindicate its nationality.

So soon as the armed vessel has made itself known by showing its

flag, the merchant vessel must also show its colors. Should it fail to do so, it is admitted that it may be warned by one gun with blank cartridge; and if this does not succeed, then by a second slotted-gun, but so pointed as not to strike the vessel.

From the moment that the merchant vessel has established its nationality, the foreign armed vessel shall not pretend to exercise any action on the vessel. It may, at furthest, and in certain cases, bring it to speak—that is, it may hail her to answer such questions as may be put through the trumpet, but without counteracting the course of the vessel.

When, however, the presumption of nationality, derived from the flag shown by a merchant vessel is seriously shaken on account of information, or of indications of such a nature as to lead to the belief that the vessel does not belong to the nation, whose colors it flies, the foreign armed vessel may proceed to verify the assumed nationality.

For that purpose a boat shall be put out toward the suspected vessel, which must have been previously hailed to notify it of the fact. This verification shall consist in an examination of the papers establishing the nationality of the vessel. It shall not be lawful to require the exhibit of any other papers than those mentioned above.

Every inquiry into the nature of the cargo, of the commercial transactions, in one word, into any other fact than that of the nationality—every search and every *visit* whatsoever is absolutely forbidden.

The officers charged with the verification shall proceed therein with the utmost discretion, and with every possible consideration; leaving the vessel so soon as the verification will have been made, and offering to note on the ship's papers the fact, and the circumstances of the verification, together with the reasons which induced him to proceed thereto.

Excepting in a case of well-grounded suspicion of fraud, it shall never, under other circumstances, be deemed necessary for the commander of an armed foreign vessel to go or send on board of a merchant vessel; so numerous are the indications (setting aside the colors) which reveal the nationality of a vessel to the eyes of every seaman.

Under all circumstances it is well understood that the armed vessel that may come to the conclusion of boarding a foreign merchant vessel, does so, in every instance, at its own risk and peril, and stands responsible for all the consequences which may follow the act.

The commander of the foreign armed vessel, resorting to this measure, shall be held in all cases to make it the subject of a report to his government, informing it of the reasons that controlled his action.

A communication of this report and of the reasons which led to the verification shall be made officially to the government, holding jurisdiction over the vessel, which will have been subjected to this inquiry into the character of her flag.

Whenever such inquiry into the flag [“*enquête de pavillon*”] shall not have been justified by evident reasons, or shall not have been made in a suitable manner, there will be ground for an indemnification claim.

[Translation.]

GEORGETOWN, *December 26, 1858.*

[Verbal note—private and reserved.]

SIR: The object of the projet, the minutes of which I had the honor confidentially to hand to you, and on which the government of the emperor would like to have the opinion of the government of the United States, is clearly to define the very rare cases in which, by an exceptional proceeding, inquiry may be made into the nationality of a merchant vessel in time of peace. It looks to confining the form of this exceptional inquiry within a limit which may not be legally trespassed upon, and to procure the adoption of that unity of form by the three great maritime powers, in order to obviate the dangers which would infallibly result from an absence of all understanding on the subject, or from the adoption by each of those three powers of a different system and mode of inquiry into the character of the flag. Count Walewski and Admiral Hamlin deem it important that this serious question of maritime law, the "inquiry into the flag," should undergo a three-fold discussion between the United States, France, and England in a spirit of frankness and of cordiality.

The wording and the spirit of the first three paragraphs of the projet simply look to the record of what has been universally admitted on the question by all the maritime powers. From this it is made to appear, that as the right of inquiry into a flag in time of peace is not *a perfect right*, it should not be exercised save under a very great responsibility. What, sir, has seemed to you to require to be more clearly explained is the bearing of the fourth paragraph, closing with these words, "the foreign armed vessel may proceed [have recourse to] with a verification of the assumed nationality," as well as that of the fifth paragraph, commencing thus: "A boat shall be detailed to that effect towards the suspicious vessel, which will have been previously hailed by way of warning." You ask me whether, according to the projet, I knew what is intended to be done in the event that the suspected vessel should answer neither the hail of the speaking-trumpet, the former nor the second gun, and should continue on her course, without waiting for the boat detached towards her by the armed vessel. It would seem that it might be the personal opinion of Admiral Hamlin that we might abstain from deciding for such a contingency, considering that, as the verification [ascertainment] of the nationality [of the vessel] in time of peace claims as its scope the suppression of piracy, every act of assault and of violence [resorting to acts] must be *à priori* prohibited, unless in case that proof of piracy have been obtained; and that, consequently, the captains of armed vessels who should use the right of constraint would be acting at their own risk and peril, and in accordance with the principle of *the law of nations*, by virtue of which the military navy may, under a lawful suspicion of piracy, verify [ascertain] the nationality of merchant vessels.

Such seems to be the individual opinion of Admiral Hamlin on the most delicate question of the French projet, which stands as yet on the footing of inquiry, and on which we solicit your opinion, which will be

held under a like consideration, as would be such combinations as you might advance on the subject.

The other paragraphs carry along their own commentaries, and moreover they do not seem to have required explanations at your hands.

It is therefore to be hoped, sir, that the whole of the projet will be deemed to be of such a nature as to meet the requirements of the posture of things, to safe-guard the interests of commerce and the honor of national flags, respectively, and that you will put it in my power to write to Paris that the opinion of the government of the United States is, in this serious matter, consonant with that of the government of the emperor.

Be pleased, sir, to accept the assurances of my high consideration.

SARTIGES.

Hon. General CASS, &c., &c.

During the progress of the negotiation the above note was marked private and reserved, but the subject having now been disposed of, it becomes a part of the public records.

Mr. Cass to the Count de Sartiges.

DEPARTMENT OF STATE,
Washington, January 25, 1859.

SIR: The memorandum which you left with me, some weeks ago, in reference to the subject of verifying the national character of merchant vessels on the high seas, should have received an earlier reply had I not expected that a *projet* upon the same subject would soon be presented from Great Britain, and that thus the two plans might be considered together. No proposition, however, from her Majesty's government has been received, and I understand from you that the government of France, before any further discussion of the subject with the cabinet of Great Britain, prefers to ascertain, as far as possible, the general views concerning it of the government of the United States. Under these circumstances, I am instructed by the President to communicate to you his views upon this important subject.

In respect to the African slave-trade, for whose protection the flags of different nations are sometimes prostituted, the position of this government cannot require any explanation. The United States were among the earliest of the nations of the world to denounce the traffic as unjust and inhuman, and it is still one of the highest crimes which are recognized by our laws. For the execution of these laws, the President, I am instructed to say, will not hesitate to use the most efficient means at his disposal.

While, however, the President is thus earnestly opposed to the African slave-trade, and thus determined to give full effect to the laws of the United States for its suppression, he cannot permit himself, in so doing, to concur in any principle or assent to any practice which he believes would be inconsistent with that entire immunity of merchant

vessels upon the ocean in time of peace for which this government has always contended, and in whose preservation the commerce of the world has so deep an interest.

This is also the position, I am gratified to observe, of the government of France. France, like the United States, recognizes no right of search or visit upon the high seas, except in time of war. France, like the United States, holds, in the language of your memorandum, that "an armed vessel cannot visit, detain, arrest, or seize any but such merchant vessel as it ascertains to belong to the same nation to which the armed vessel itself belongs." France, like the United States, holds, further, that while cases may exist of a fraudulent assumption of a flag, the verification of such a case must be made at the peril of the party making it, or, in the words of your memorandum, "under all circumstances it is well understood that the armed vessel that may determine to board a foreign merchant vessel does so, in every instance, at its own risk or peril, and stands responsible for all the consequences which may follow the act."

While thus recognizing the immunity of merchant vessels on the ocean, and the grave responsibility which is assumed by a ship-of-war when she boards a foreign ship in order to verify its flag, your memorandum suggests some interesting views in respect to the caution with which such a verification should be pursued and such a responsibility exercised. I do not understand that the French government desires to limit this responsibility, or to change, in any way, that rule of international law by which, in time of peace, an honest merchantman is protected on the ocean from any visit, detention, or search whatever. Undoubtedly a ship-of-war may sometimes find a foreign merchant vessel so surrounded by suspicious circumstances as to induce the belief that she is sailing under false colors, and in such a case the ship-of-war may think it right to adopt some proper measures to verify the suspected flag. If, upon inquiry, its suspicions are realized, no one has any right to complain; but if the suspected vessel turns out to be an honest trader, there can be no doubt that a trespass has been committed on her rights, which may or may not be excusable, according to the peculiar circumstances under which it was committed. The burden of proof, in every such case, must necessarily rest upon the party committing the error, who will be bound to show, not only that his suspicions were reasonably excited, but that he exercised due caution and care in respect to their verification. To reverse this rule, and throw the burden of proof upon the suspected party, or to hold that a ship-of-war can, under any circumstances, treat an innocent merchantman of a foreign nation as a guilty vessel, would be attended with very dangerous consequences, and is not, I repeat, what I understand your memorandum to contemplate.

If I correctly understand the purpose of your government on the subject, its only desire is to prevent the rights of merchantmen from being capriciously interfered with by the commanders of ships-of-war, and to this end, as far as possible, to substitute the well-considered instructions of the government for the hasty conclusions of its naval officers. There can be no doubt that this precaution is eminently desirable, and that every government should take care so to instruct

naval commanders as to prevent, as far as possible, any improper interference at sea with the merchant ships of other nations. Such instructions are manifestly necessary, not only with reference to the general interests of commerce, but also to avoid those claims for redress which are sure to arise whenever a merchant vessel of one country is improperly visited or detained by a public vessel of another country. In the general features of those instructions it is natural to suppose that the commercial nations of the world will be essentially in agreement. Your memorandum, for example, suggests that when a ship-of-war and merchant vessel meet on the high seas the latter should not refuse to display her flag; and certainly such a refusal, in the absence of any satisfactory explanation, would be a suspicious circumstance. Other suspicious circumstances may exist, at the same time, which may lead the ship-of-war to pursue the mode of verification pointed out in your memorandum; and if the case is one where any verification at all is to be pursued, the measures for this purpose suggested in your memorandum are calculated, it seems to me, to accomplish the object with the least possible difficulty. But both France and the United States agree that these measures, or any similar measures, can only be employed at the risk and peril of the party using them, who is bound to show, in every case of erroneous suspicion and visit, such extenuating circumstances as will reasonably satisfy the injured party. To determine in advance precisely what circumstances may be regarded as a sufficient warrant for doubting the nationality of a merchant vessel appears to me to be quite impossible, and every case may, perhaps, be safely left to be determined by itself.

I have thus stated the general views of the President upon the subject of your memorandum, and I do not make a more detailed reply because I am not quite sure whether I have correctly interpreted the views and wishes of your government. To agree upon any plan of verification which would change the rule of international law and authorize in advance the commission of a trespass, is a very different thing from merely assenting to certain modes of proceeding as being reasonable and proper in a given case. The former would be alike objectionable, I am persuaded, to France and the United States. The latter would be far less objectionable, and, as I have already said, the precautionary instructions of different nations to their naval commanders, respectively, would not probably be very dissimilar in their general features. If these instructions were interchanged among the governments most interested in the subject, a sufficient degree of uniformity might possibly be obtained without any special agreement upon a detailed plan.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

LEWIS CASS.

The COUNT DE SARTIGES, &c., &c., &c.

Lord Napier to Mr. Cass.

HER BRITANNIC MAJESTY'S LEGATION,
Washington, February 3, 1859.

SIR: In the month of June last I had the honor of receiving from you and of communicating to her Majesty's government an assurance that the government of the United States would give their attentive consideration to any proposal which might be suggested on the part of Great Britain for the verification of the nationality of merchant vessels and their right to the flag which they displayed.

During the interval which has since elapsed, the attention of her Majesty's government has been unceasingly directed towards framing some plan of proceeding at sea, by which the object under contemplation might be secured, without any transgression of those rights to which the maritime powers attach such a high and just importance.

The correspondence which has passed between her Majesty's government and that of France on this subject has resulted in the presentation by the imperial cabinet of a memorandum, inclosed herewith, embodying their views, and stating the course which might, in their opinion, be prescribed to the commanders of vessels of war in the verification of the nationality of merchant ships on the high seas, both with reference to enforcing the exhibition of colors, and ascertaining the right of the suspected vessel to wear them.

Although the proposals of the French government may not in all respects be commensurate to the purpose in view, her Majesty's government consider it so important that an identical code of instructions on this matter should be given to their cruisers by all the maritime powers, that they do not hesitate to invite your attention to the overtures of France, in the hope that the government of the United States will acquiesce in the regulations contemplated, and give orders to the commanders of their naval forces in accordance with the same.

I have the honor to be, with the highest consideration, sir, your most obedient humble servant,

NAPIER.

Hon. LEWIS CASS,
Secretary of State, &c.

En vertu de l'immunité de pavillons, tout bâtiment marchand naviguant en pleine mer est hors de toute juridiction étrangère. Un navire de guerre ne peut donc visiter, détenir, arrêter et saisir que les bâtiments de commerce qu'il reconnaît avoir la même nationalité que lui.

Le pavillon étant *prima facie* le signe distinctif de la nationalité d'un navire, et par conséquent la contestation de la juridiction dont il relève, il est naturel qu'un bâtiment marchand, lorsqu'il se trouve en pleine mer en vue d'un navire, hisse son pavillon pour attester sa nationalité; dès que le bâtiment de guerre s'est fait reconnaître en

arborant ses couleurs, le bâtiment marchand doit donc également arborer les siennes. S'il s'y refuse, il est admis qu'on puisse le semoncer par un 1^{er} coup de canon à poudre, et s'il reste sans effet, par un second coup de canon à boulet, mais dirigé de manière à ne pas l'atteindre.

Des qu'en arborant son pavillon, le bâtiment marchand a établi sa nationalité, le navire de guerre étranger ne doit plus prétendre à aucune action sur lui. Tout au plus, peut il dans un certain cas user du droit de le faire raisonner, c'est à dire lui demander de répondre aux questions adressées par porte-voix, mais sans contrarier sa route.

Lorsque cependant la présomption de nationalité résultant du pavillon arboré par un navire marchand se trouve mise sérieusement en doute par des informations ou des indices de nature à faire croire que le bâtiment n'appartient pas à la nation dont il a pris les couleurs, le navire de guerre étranger peut recourir à une vérification de la nationalité assumée.

Une chaloupe sera détachée à cet effet vers le bâtiment suspect qu'on aura hélé préalablement pour l'en avertir. La vérification consistera dans l'examen des papiers constatant la nationalité du bâtiment. Il ne pourra être réclamé que l'exhibition de ces pièces. Toute enquête sur la nature du chargement, sur les opérations commerciales, sur un autre fait, en un mot, que celui de la nationalité, toute recherche, toute visite quelconque sont absolument interdites. L'officier chargé de la vérification devra y procéder avec une grande discrétion et avec tous les égards possibles, et quitter le navire aussitôt la vérification effectuée, en offrant de spécifier sur les papiers du bord le fait, les circonstances de la vérification et les motifs qui l'ont déterminé à y procéder.

Hors le cas de suspicion légitime de fraude, il ne devra, d'ailleurs, jamais être nécessaire que le commandant d'un navire de guerre étranger ait à monter ou à envoyer à bord d'un bâtiment de commerce, tant sont nombreux les indices qui, abstraction faite des couleurs, révèlent aux yeux des marins la nationalité d'un bâtiment.

Il est en toute hypothèse bien entendu que le navire de guerre qui se décide à aborder un bâtiment de commerce étranger, le fait toujours à ses risques et périls, et demeure responsable de toutes les conséquences qui peuvent résulter de son acte.

Le commandant du navire de guerre étranger qui aura eu recours à cette mesure, devra dans tous les cas en faire l'objet d'un rapport à son gouvernement et l'informer des motifs évidents qui l'ont fait agir.

Communication de ce rapport et des raisons qui ont provoqué la vérification sera donnée officiellement au gouvernement auquel appartiendra le navire qui aura été soumis à l'enquête du pavillon.

Toutes les fois que celle-ci ne sera pas justifiée par des raisons évidentes, on n'aura pas été faite d'une manière convenable, il y aura lieu à indemnité.

Mr. Cass to Mr. Dallas.

No. 157.]

DEPARTMENT OF STATE,
Washington, February 23, 1859.

SIR: Your letters of December 16 and 24 last past, and the note of Lord Malmesbury to you, dated the 14th of the same month, and which was transmitted in your letter of the 14th, and also your acknowledgment of the receipt of the latter, have been some time before the department; but the difficulty of procuring the necessary information upon some of the subjects referred to has prevented me from communicating to you the views of the government at an earlier day.

In your note to Lord Malmesbury of December 19 you have done justice to the desire and the efforts of the United States for the abolition of the slave-trade, and also to the regret which the abuse of the American flag for the purposes of that traffic has occasioned to the government. The extent to which this reprehensible practice is carried I have not the means of ascertaining, nor how many of the vessels named in the list transmitted by Commodore Wise to the British admiralty were actually engaged in the slave-trade, or were *bona fide* American. As I remarked heretofore to Lord Napier, there is just ground to believe that nearly if not quite all the vessels bearing the American flag and engaged in this trade belong to foreigners; and Commodore Wise, in his account of the capture of the *Rufus Soulé*, discloses the measures which may sometimes be resorted to in order to enable a vessel to maintain a national character to which she has ceased to have any just claim. That officer also states that under the American "ensign" alone is the slave-trade now conducted. It is difficult to reconcile this opinion with some of the facts he communicates, or, at any rate, with the charge that the flag of the United States is an immunity for the slave trader, for he reports the capture of 33 vessels which either did not bear the American flag, or were not protected by it from seizure; and of 23 other vessels which escaped capture, it does not appear that more than 11 of them were ascertained to have sailed under the flag of this country. But, however this may be, the United States are not subject to censure under any circumstances, unless they are justly chargeable with neglect of duty in not adopting such measures as their position fairly requires of them. But they fear no such accusation. They have made the slave-trade a capital offense, and they assign no inconsiderable portion of their navy to the duty of its suppression. The great slave mart of the world is the Island of Cuba, and if this were closed this traffic would at once be annihilated. The authority of Spain is firmly established in that island, and her military force there is quite sufficient to insure the accomplishment of any measure of domestic policy decreed and seriously desired by the Spanish government. It is known that Spain has, by a convention with Great Britain, and for a pecuniary consideration, placed herself under obligation to prevent the introduction of slaves into her American possessions. If this stipulation were fulfilled, the desired object would be peaceably attained, and all those dangerous

questions avoided which are sure to present themselves whenever the freedom of the seas is interfered with, whatever motive may be assigned for the proceeding. The United States have engaged, by the Ashburton treaty, to "unite with Great Britain in all becoming representations and remonstrances with any and all powers within whose dominions such [slave] markets are allowed to exist, and that they will urge upon all such powers the propriety and duty of closing such markets effectually at once and forever." Lord Napier inquired, a few days since, whether this government were now willing to give effect to this stipulation by making the necessary representations and remonstrances to the government of Spain. I assured his lordship that there would be no hesitation in performing this duty whenever there may be reason to believe that the expression of their views by the United States would produce any favorable effect upon the action of the Spanish government; but that the relations of Spain and Great Britain, and especially the conventional stipulations between them, would give to the intervention of the latter much more probability of success than could be anticipated from the representation of the United States. In fact, it is difficult to believe that, under existing circumstances, the Spanish government would resist the firm remonstrances of the government of Great Britain.

I see no reason why the flag of the United States should be the only "ensign" of national sovereignty prostituted by slave dealers, and certainly, as I have already observed, there is none which can be justly urged as a reproach against this government. The position taken by the United States respecting the immunity of their vessels upon the ocean is precisely that assumed by France, and both nations equally deny the claim of visitation and equally object to its exercise. A slave-trade adventurer carrying the French colors is no more subject to examination by a British cruiser than if he hoisted the colors of the United States; and in neither case is it the assumption of the flag which confers the immunity, but the legal character of the vessel, agreeably to the principle stated in my letter to Lord Napier of April 10, 1858, and which was laid down by Mr. Webster, by order of the President of the United States, in a letter to Mr. Everett, then minister in London, dated March 28, 1843.

Lord Malmesbury, while referring to the report of Commodore Wise, depicting the horrors of the slave-trade, considers the circumstances of so flagrant a nature as to be "calculated to move the most prejudiced feelings in regard to the question of the right of visit, and to urge the most decided measures for the suppression of proceedings which must be held to be equivalent to the grossest acts of piracy."

As to the suffering and loss of life referred to, they are everywhere known and condemned. The horrors of the passage can scarcely be described in more powerful language than has already been employed in making them known to the world. But the question of effectual repression presents grave practical difficulties, and in their consideration it is not alone the nature of the traffic, but there are other important circumstances also which must be taken into view.

I do not understand precisely the bearing of the remark of Lord Malmesbury, that these revolting cruelties are calculated to move the

most prejudiced feelings in regard to the question of the right of visit, &c. There is no right of visit except, as Lord Stowell said, from the belligerent claim. The forcible visitation of vessels upon the ocean is prohibited by the law of nations in time of peace, and this exemption from foreign jurisdiction is now recognized by Great Britain, and, it is believed, by all other commercial powers. Even if the exercise of a right of visit were essential to the suppression of the slave-trade, whether such a right should be conceded by one nation to its co-states of the world is a question for its own consideration, involving very serious consequences, but which is little likely to encounter any prejudiced feelings in favor of the slave-trade in its solution, nor to be influenced by them. But there is just reason to believe that the value of a right of visitation, as a means of putting an end to this traffic, has been greatly overrated. The object of such visitation is to ascertain the national character of a vessel. If found to belong to the same nation as the cruiser making the visit, and violating its laws, she may be seized. If belonging to another nation, she must be released, in whatever employment she may be engaged, unless, indeed, she has become a pirate, in which case she is liable to be captured by the naval force of any civilized power. If the United States maintained that by carrying their flag at her mast-head any vessel became thereby entitled to the immunity which belongs to American vessels, they might well be reproached with assuming a position which would go far towards shielding crimes upon the ocean from punishment. But they advance no such pretension, while they concede that if, in the honest examination of a vessel sailing under American colors, but accompanied by strongly-marked suspicious circumstances, a mistake is made, and she is found to be entitled to the flag she bears, but no injury is committed, and the conduct of the boarding party is irreproachable, no government would be likely to make a case thus exceptional in its character a subject of serious reclamation.

The security against the abuse of any such power is to be found in the responsibility of the nation whose naval force commits an unlawful act, and in the right of the injured party to adopt such measures of redress as it may consider due to the nature of the injury. But to reverse the relation of the parties, and to confer upon the aggressor the right to decide when he may exercise this armed and summary jurisdiction, is improvidently to prostrate one of the barriers of national defense wisely constructed by the public law of the world. Whatever guards might be provided by conventional stipulations against the arbitrary exercise of such an authority, from its very nature, and the circumstances attending its exercise, strength and weakness being brought into contact and upon every part of the ocean, "these detentions," in the words of Mr. Webster, "necessarily lead to serious inconvenience and injury." "Besides the pecuniary loss they occasion," he adds with truth, "they too frequently irritate individuals, cause warm blood, and produce nothing but ill effects on the amicable relations existing between the countries." This government chooses to reserve this power of judgment to itself, disposed at the same time to deal fairly with such mistakes as may honestly occur, but not disposed to convert trespasses into legal acts by previous conventional arrangements.

Lord Malmesbury expresses the conviction of the British government, that equally with themselves the government of the United States will view with horror the prostitution of the American flag to the purposes of the slave-trade. This admission is but an act of justice, though certainly there is nothing in the principles or position we have maintained which called for its formal communication. This country was the first among the nations of the world to make the prosecution of the slave-trade by its citizens a capital offense, and their repugnance to it has ever since been constant and constantly avowed. Certainly the government, though it is satisfied that the extent to which the employment of *bona fide* American vessels in this trade has been carried has been greatly overrated, has seen the abuse of its flag with as much aversion as this crime has inspired in Great Britain, and it is well persuaded that the British government has viewed with as much aversion as the government of this country the similar abuse which has heretofore taken place of the British flag. Both of these nations, all civilized nations indeed, are under serious obligations to provide for the suppression of crimes within their jurisdiction, whether upon the land or the water. But even the sternest legislation and the most vigorous administration cannot always prevent the commission of crimes nor insure their punishment; and a nation fully meets its responsibility when it fairly adapts its measures to the circumstances in which it is placed, and of these it must necessarily be the judge.

Lord Malmesbury assures you the British government believe "that the government of the United States will be prepared to vindicate the honor of its flag by repudiating acts calculated to lower it in the estimation of civilized nations, and by taking effectual steps to prevent its being abused by traffickers in human flesh."

His lordship will not find himself in error in the expectation that all the duties of the United States connected with this grave subject will be fulfilled, nor in the hope he expresses that the spirit of his communication will not be misunderstood. But while giving these assurances, it is due to the earnest representation he addresses on the part of his government to the government of the United States to assure him also that there is nothing, either in the course of this government nor in the abuse of its flag, which calls for this emphatic reference to its duties and this expression of the hope that these will be performed. There are high moral considerations which have induced the United States to prohibit their citizens from engaging in this employment. Violations of their laws upon this subject no doubt occasionally take place, as violations of the criminal laws of all countries occur from time to time. I presume it will not be denied that this is a misfortune to which Great Britain is also sometimes exposed, both upon land and water. But the vindication of her honor requires no act of repudiation on her part when such breaches of her laws take place. Nor does the abuse of the flag of the United States for any unworthy purpose make this government responsible, unless, indeed, it fails to perform its proper duties. This it has not done. It has repudiated these acts in the most solemn manner, by declaring them criminal and punishable with death, and it has not the least apprehension that its honor will suffer in the estimation of civilized nations

in consequence of the unlawful prosecution of the slave-trade by its citizens or by foreigners seeking the protection of its flag. The measures of repression which it has adopted, and which it is prepared to render still more efficient, offer satisfactory proof of its sincerity to all who are disposed to regard its position in a spirit of justice. And if it decline to confer upon another nation the police over its vessels upon the ocean, it is from no sympathy with this commerce, nor from any desire that its citizens should pursue it, but from its conviction that the freedom of the seas is essential to the best interests of the world, and that its maintenance is incompatible with any such concession. And I have reason to believe that the government of France in its general views of this subject agrees substantially with the government of the United States.

With a view to stimulate the action of this government, Lord Malmesbury observes that "the United States have maintained that they are able and determined to preserve the police of the seas in so far as the American flag is concerned, and that, by the treaty of August 9, 1842, with Great Britain, they have engaged to maintain a force on the coast of Africa to control proceedings such as those which form the subject of this note."

I do not know to what particular declaration, made on the part of this country, regarding the police of its vessels upon the ocean, Lord Malmesbury refers in the above quotation. But I have no hesitation in admitting that it expresses the views of the United States, and it is presumed that it expresses also the views of all other commercial powers.

By the law of nations every independent state possesses the exclusive right of police over all persons within its jurisdiction, whether upon its soil or in its vessels upon the ocean. And this national prerogative can only be interfered with in cases where acts of piracy are committed, which, by the public law of the world, are cognizable by any power seizing the vessel thus excluded from the common rights of the ocean. Lord Malmesbury, indeed, remarks, that these slave-trade proceedings "must be held to be equivalent to the grossest acts of piracy." But reprehensible as is that traffic, it is not piracy, nor is it equivalent to piracy in any of the legal consequences which result from it. It is an offense created by national not by international law, and is punishable only by the country to which the offenders are responsible. The United States have, indeed, by statutory provision, declared it piracy, but that is a domestic regulation merely adopted for the purposes of its own criminal justice, but which gives no jurisdiction to any foreign power.

The police over their own vessels being a right inherent in all independent states, each of them is responsible to the public opinion of the world for its faithful preservation, as it is responsible for the execution of any other duty. The measures it will adopt must depend upon its own judgment; and whether these are efficient or inefficient, no other nation has a right of interference. And the same principles are applicable to territorial jurisdiction. Good laws it is the duty of every government to provide, and also to make suitable provision for their just administration. But because offenders sometimes escape, nations

are not therefore disposed to admit any participation in the execution of these laws, even though such a measure might insure their more faithful execution. Commodore Wise looks to a conventional arrangement between Great Britain and the United States, by which British cruisers may be permitted to capture American vessels, with a view to their surrender to the American naval forces, as the most effectual means of suppressing the slave-trade. I believe the object may be certainly attained without the adoption of this professional suggestion. If not, I should have no hope of its accomplishment. The surrender of a right of police over its vessels to the armed cruisers of a great maritime power is a measure which this country would sternly reject under all circumstances, even at the hazard of being accused of refusing to cooperate in the effort to annihilate this employment. Such a system of foreign interference might, indeed, sometimes be usefully exercised upon the ocean in the detection and punishment of crimes, but the additional security thus gained would be dearly purchased by the sacrifice of an important element of national independence; and in its practical operation an immense navy could exercise no such authority over the commercial marine of other powers without the commission of aggressions which could not fail to lead to dangerous consequences. Nor would such a proposition be rendered more acceptable by the suggestion made by Commodore Wise, that the transatlantic slave dealers will make vigorous efforts during the coming season; "and if they extend their enterprises to the Bights of Benin and Biafra, farewell to the remunerative and rapidly increasing trade which is now carried on on that coast." Whether the object be commercial or philanthropic, the United States would still be opposed to the exercise of a foreign jurisdiction over their vessels.

The report of Commodore Wise, which contains this expression of apprehension, contains also various statements respecting the operations upon the coast of Africa; but the information in the possession of this department is not sufficient to enable me to form a judgment of their correctness. In some important particulars they are at variance with the reports received from officers of our African squadron, and I shall therefore request the Secretary of the Navy to furnish me with copies of so much of them as relate to these points, and shall transmit them to you that you may invite the attention of the Earl of Malmesbury to the subject, with a view to the adoption of such measures as will remove all fear of difficulties hereafter. There is one statement, however, of Commodore Wise which calls for immediate consideration. That officer says, that "last year slavers were (in the majority of cases) captured through their captains foregoing the protection of the American flag, but now American slavers are arriving and sailing with almost as much impunity as if they were engaged in legal traffic." That vessels employed in this traffic too often escape, there can be no doubt; but that they pursue it with as little risk as is here indicated, is an obvious error.

Such a denunciation is irreconcilable with the presence of a squadron of repression upon that coast, unless, indeed, its duties are flagrantly neglected, and its officers regardless of what they owe to themselves and their country. It would be a work of supererogation to defend

them from such an accusation. Their best defense is to be found in the glory of that navy which they have so successfully labored to build up, and in the high estimation in which they are held by their countrymen.

As to the charge of "foregoing the protection of the American flag," I presume Commodore Wise refers to the practice of which I complained in my letter to Lord Napier of April 10, 1858, by which the masters of vessels furnished with American papers were induced by the representations of British boarding officers to throw their papers overboard. Why they should do so without being influenced by threats, or by the hope of escaping impending punishment, it is difficult, impossible, indeed, to conceive. If a vessel has regular American papers, she is beyond the reach of a British cruiser, which, in the language of Commodore Wise, "has no legal right to molest them (her) in any way." What advantage, then, does she gain by the loss of her papers, whose destruction at once subjects her to capture, and to the disposition of the British naval authorities? If taken by an American cruiser, the persons found on board such vessel engaged in the slave-trade are liable to the punishment of death; while, if they voluntarily subjected themselves, by the destruction of their papers, to be arrested by the British naval forces, it is understood to have been the practice to land them upon the nearest part of the coast, where they were left free, while the captors were entitled to prize money for the vessel and her living cargo. The nature of the inducement held out for this surrender, heretofore referred to in my letter to Lord Napier of April last, is indicated by the answer of Commodore Wise to the inquiry of Lieutenant Davidson, of the American navy, who had asked the commodore whether, in the event of his meeting an American slaver, under American colors, and bearing genuine papers, he would use means to induce the captain to throw his colors and papers overboard. To which he replied, "Well, I might strain a point, and tell the captain the Dale was just near at hand." The Dale is an American vessel of war, and capture by her would subject the offenders to the extreme punishment provided by the laws of the United States. By such proceedings, it is not American protection which is foregone, to use the expression of Commodore Wise, but American justice which is defeated. Commodore Wise seems to be under the impression that this reprehensible practice is now abandoned.

The information received from our African squadron justifies a different conclusion; and, indeed, the circumstances attending the capture of the Rufus Soulé in October last, as reported to the Navy Department, lead to the opinion that some such means are yet resorted to, and with the same protection of the criminals against punishment; for the crew of that vessel were landed upon the coast and suffered to depart.

The facts connected with the capture and burning of the vessel are very differently represented by the American and British officers. The proceedings were attended with circumstances so very reprehensible, if not clearly justified by the situation of the vessel, that I desire, when the reports from the Navy Department reach you, that you request an immediate investigation of the transaction, and the adoption

of such measures of redress and prevention as the state of the case may call for.

The tenor of some of the remarks in the dispatch of Lord Malmesbury rendered it proper to advert somewhat in detail to the views he has presented. That course became necessary in order to redeem the United States from any misapprehension under which his lordship might labor; that their indisposition to admit any other nation to a participation in the exercise of criminal jurisdiction, either preventive or punitive, over their commerce or navigation, originated in any sympathy with this unlawful occupation. Far other motives have influenced their course. The question of suppression, under existing circumstances, presents, as I have already said, serious practical difficulties arising out of dangers to the freedom of the seas, and out of the extraordinary exertions of enterprising men well acquainted with the business, and which are called into action by the enormous profits which a successful adventure is sure to bring. The British government has been already informed that this government entertains serious doubts of the efficiency of the African squadrons, which are employed in the suppression of the slave-trade in accomplishing this work. They cannot close the long line of coast where it is most active, and the success which has attended these efforts of prevention bears a very unequal proportion to the expenditure of life and treasure they have cost. But the President is unwilling, notwithstanding these doubts, to withhold the coöperation of the United States from this work of repression, and the serious appeal of the British government is entitled to respectful attention. The President is prepared to adopt all proper measures within the sphere of his constitutional authority to prevent American vessels or citizens from being engaged in the slave-trade. But while giving this assurance, I am also instructed by the President to express the confident hope that the British government may be able to secure, at an early day, the complete fulfillment of its treaty stipulations on this subject with the government of Spain. I cannot doubt that such a fulfillment would go very far towards accomplishing the purpose which both nations have in view of closing the traffic in African slaves.

There are measures, too, which the British government can adopt in Africa, and which it is believed will materially contribute towards the accomplishment of the object. In my letter to Lord Napier of April 10, 1858, I made the suggestion, and subsequent information has confirmed the opinion then expressed. In the hope that it may meet the attention of Lord Malmesbury, and may lead to a favorable consideration of the proposition, I transfer to this letter what I then said upon this subject:

“But other means have been suggested by persons intimately acquainted with the slave coast, and who have watched the slave-trade operations, and which offer encouraging prospects of success if adopted. These suggestions relate to the extension of the free colonial establishments in that region so as to create barriers at the most exposed points, and also to the construction of small military posts or block-houses, garrisoned from the acclimated population, at or near the places to

which the course of the trade has been directed, and where the means of interchange may be found."

So far as respects the action of the United States, no additional legislation is deemed necessary. By the treaty of Ghent, in 1814, and by the Ashburton treaty of 1842, their condemnation of the slave-trade is formally expressed, and its prosecution has been made a statutory offence, punishable with death. They have maintained upon the coast of Africa a larger force, it is believed, in proportion to the extent of their navy, than any other power, and this disparity will be still further increased as soon as the additional measures directed by the President are carried into effect. These measures look to the employment of armed steamers upon the African coast and in the Cuban waters, a description of force far better adapted than sailing vessels to the pursuit and capture of the rapid craft which carry on this trade. The number of vessels which may be detached upon this duty will depend upon the state of the public service, but it is hoped that two at least may be ordered to Africa, and three or more to Cuba. The Ashburton treaty requires that each of the powers parties to it shall maintain a squadron upon the coast of Africa carrying at least eighty guns; but if by mutual consent the number of guns were reduced, and small steam vessels substituted for sailing vessels, the service would be much more efficiently performed, and the expense not increased.

You are instructed to read this dispatch to Lord Malmesbury, and, should he desire it, you may leave a copy with him.

I am, sir, respectfully, your obedient servant,

LEWIS CASS.

GEORGE M. DALLAS, Esq., &c., &c., &c.

Lord Napier to Mr. Cass.

HER BRITANNIC MAJESTY'S LEGATION,
Washington, March 12, 1859.

SIR: In my note of February 3, I had the honor of laying before you a memorandum communicated to her Majesty's government by that of France, embodying the basis on which it was conceived that regulations might be framed for the guidance of the commanders of vessels of war in ascertaining the nationality of merchant vessels at sea.

Further communications between the cabinets of Paris and London have resulted in the presentation, on the part of Great Britain, of the accompanying draft of instructions, conformable to the basis above mentioned, which her majesty's government are prepared to issue to their officers, and which it is hoped may be acceptable to the governments of France and the United States.

This scheme of instructions was, by my last intelligence, under the consideration of the French cabinet, and it is, with the assent of the French minister, communicated to you in order that, in framing that reply which I am led to expect from the government of the United States on the receipt of further explanations from Paris, you may have

before you as complete a view as possible of the state of the negotiation between the European powers.

I avail myself of this occasion also to submit to you again the strong desire entertained by her Majesty's government that, in adjusting a common method of procedure in this matter, the government of the United States should recognize the principle that a ship-of-war has a right to compel a merchant vessel by force, if necessary, to hoist the colors of the nation to which she claims to belong. This question is one which I have more than once brought under discussion in verbal conference with you, and I have not failed to convey to the Earl of Malmesbury the general sense of your occasional reflections on the subject. As the principle referred to continues to engage the attention of the cabinets of England and France, and as the opinion of the government of the United States must justly have great weight with the maritime powers, I have thought it advisable to bring the question again under your notice, in the hope that, in your eventual answer to the overtures of her Majesty's government, some resolution of an unambiguous and official character may be conveyed on a point of no slight importance in the adjustment of a method for the verification of the nationality of shipping on the high seas.

I have the honor to be, with the highest consideration, sir, your most obedient humble servant,

NAPIER.

Honorable LEWIS CASS,
Secretary of State, &c., &c., &c.

Instructions proposed to be printed and issued to the commanding officers of her Majesty's ships and vessels employed in the suppression of the slave-trade.

ADMIRALTY, 1859.

The treaty with France for the suppression of the slave-trade having been abrogated, I am commanded by my lord's commissioners of the admiralty to acquaint you that under an arrangement which has been adopted provisionally between the British and French governments, their lordships desire that all commanding officers of her Majesty's ships will strictly attend to the following regulations with regard to visiting merchant vessels suspected of fraudulently assuming the French flag.

In virtue of the immunity of national flags, no merchant vessel navigating the high seas is subject to any foreign jurisdiction. A vessel-of-war cannot, therefore, visit, detain, arrest, or seize, (except under treaty,) any merchant vessel not recognized as belonging to her own nation.

The colors of a vessel being *prima facie* the distinctive mark of her nationality, and consequently of the jurisdiction to which she is subject, it is natural that a merchant vessel on the high seas, on finding herself in presence of a ship-of-war, should hoist her national flag in

declaration of her nationality. So soon as the ship-of-war has made herself known by the display of her own colors, the merchant vessel should accordingly hoist her proper national flag.

Should she refuse to do so, it is admitted by both countries that she may be summoned to do so; first, by a blank gun; and should that be without effect, it may be enforced by a second gun, shotted, but pointed in such a manner as to insure that she is not struck by the shot.

Immediately that the colors are hoisted and that the merchant vessel has in this manner announced her nationality, the foreign vessel-of-war can no longer pretend to exercise control over her. At most, in certain cases, she may claim the right to speak with her and to demand answers to questions addressed to her by a speaking trumpet or otherwise, but without obliging her to alter her course.

Whenever, however, the presumption of nationality resulting from colors which may have been shown by a merchant vessel may be seriously thrown in doubt or be questionable from positive information, or from indications of a nature to create a belief that the vessel does not belong to the nation whose colors she has assumed, the foreign vessel-of-war may have recourse to the verification of her assumed nationality.

A boat may be detached for this purpose towards the suspected vessel, after having first hailed her to give notice of the intention. The verification will consist in an examination of papers establishing the nationality of the vessel. Nothing can be claimed beyond the exhibition of these documents.

To inquire into the nature of the cargo, or the commercial operations of the vessel, or any other fact, in short, than that of the nationality of the vessel, is prohibited. Every other search and every inspection whatever is absolutely forbidden.

The officer in charge of the verification should proceed with the greatest discretion and with every possible consideration and care, and should quit the vessel immediately that the verification has been effected, and should offer to note on the ship's papers the circumstance of the verification, and the reasons which may have led to it.

Except in the case of legitimate suspicion of fraud, it should never otherwise be necessary for the commander of a foreign ship-of-war to go on board or to send on board a merchant vessel. Apart from the colors shown, the indications are numerous which should be sufficient to satisfy seamen of the nationality of a vessel.

In every case it is to be clearly understood that the vessel-of-war which determines to board a merchant vessel must do so at her own risk and peril, and must remain responsible for all the consequences which may result from her own act.

The commander of a ship-of-war who may have recourse to such a proceeding should, in all cases, report the fact to his own government, and should explain the reason of his having so acted. A communication of this report and of the reasons which may have led to the verification will be given officially to the government to which the vessel may belong which shall have been subjected to inquiry as to her flag.

In all cases in which this inquiry shall not be justified by obvious

reasons, or shall not have been made in a proper manner, then a claim may arise for indemnity.

You will clearly understand that the foregoing instructions have reference only to vessels navigating under the French flag, and are intended mutually to prevent misunderstanding between the British and French governments, but cannot affect the vessels of other nations with whom Great Britain has treaties for the suppression of the slave-trade, or deprive her Majesty of the right to seize and detain vessels engaged in the slave-trade when not entitled to the protection of any national flag.

The Count de Sartiges to Mr. Cass.

[Translation.]

LEGATION OF FRANCE IN THE UNITED STATES,
Georgetown, March 12, 1859.

SIR: Pursuant to the serious examination to which the government of the Emperor and that of the Queen have devoted themselves with the design of seeking the best mode of inquiry as to flag, and upon which subject the opinion of the government of the United States has been amicably solicited by the legations of France and England at Washington, the government of the Emperor has adopted the opinion expressed by the government of her Britannic Majesty, that while waiting until there shall be a general agreement in regard to the mode of inquiry as to flag, the governments of France and England might, for the time being, furnish their officers of navy with instructions drawn up in the spirit of the project which has emanated from the French admiralty, and which I have previously had the honor to communicate to you. These instructions, which as yet only constitute a provisional state of things, have been issued by the English admiralty, and they will probably have been communicated to you by my colleague of England, who is equally interested in these questions, and with whom I am authorized to enter into arrangements. Admiral Hamelin is at this time causing similar instructions to be prepared, in order to be addressed to the officers of the imperial navy. I shall hasten to communicate them to you as soon as they reach me.

But, sir, in order to put an end to the provisional and individual character of these instructions, and in order to render them, with the exception of modifications, definitive and general, the maritime powers will, above all things, have to come to an understanding in regard to the acknowledgment, or to speak more exactly, in regard to the reaffirmation of the obligations hitherto universally admitted for merchant vessels to prove their nationality by exhibiting their national flag, and also in regard to the principle which would seem to flow therefrom of the right of a ship-of-war to make a merchant vessel which she meets on the high seas hoist her colors. This question of principle is seriously studied at Paris and at London. The Count Walewski invites me to converse with you about it, and to ask you to be so good

as to lay it also before his excellency the President, while requesting you to make known to us the result of the definitive opinion which the cabinet at Washington shall express on the subject.

Accept, sir, the assurances of my high consideration.

SARTIGES.

Hon. LEWIS CASS,
Secretary of State, &c., &c., &c.

Mr. Cass to Mr. Dallas.

No. 160.]

DEPARTMENT OF STATE,
Washington, March 15, 1859.

SIR: Pursuant to your request, a copy of all the correspondence not heretofore communicated to you which has taken place between this department and the British and French ministers here relative to the right of visitation is now transmitted for your information. You will notice that the discussion has not yet been brought to a close, but that this department awaits the decision of the French government as to the responsibility of the officer who may make the visit. This government can in no event consent that this responsibility may be denied or evaded.

I am, sir, respectfully, your obedient servant,

LEWIS CASS.

GEORGE M. DALLAS, Esq., &c., &c., &c.

List of accompanying papers.

Memorandum left at the department by the Count de Sartiges.
Translation.

Count de Sartiges' verbal note to Mr. Cass of December 26, 1858.
Translation.

Mr. Cass to Count de Sartiges, January 25, 1859. Copy.

Lord Napier to Mr. Cass, February 3, 1859. Copy.

Lord Napier to Mr. Cass, March 12, 1859. Copy.

The Count de Sartiges to Mr. Cass, March 12, 1859. Translation.

[These papers may be found in their chronological order in this report.]

Mr. Dallas to Mr. Cass.

[Extract.]

No. 168.]

LEGATION OF THE UNITED STATES,
London, March 18, 1859.

SIR: Agreeably to the instruction addressed to me in the concluding paragraph of your No. 157, I invited an interview with the Earl of

Malmesbury, and, on the 14th instant, read to him that dispatch. At his request, I left in his hands a prepared copy. His lordship had assigned an hour for our meeting, half-past four o'clock, so close upon that at which the house of peers convened, where his presence was necessary, that no time for comment of any kind was left.

* * * * *

I have the honor to be, sir, your most obedient servant,
G. M. DALLAS.

Hon. LEWIS CASS,
Secretary of State.

British and French Naval Instructions.

[Confidential.]

ADMIRALTY.

SIR: 1. The treaty with France for the suppression of the slave-trade having been abrogated, I am commanded by my lords commissioners of the admiralty to acquaint you that, under an arrangement which has been adopted provisionally between the British and French governments, their lordships desire that all commanding officers of her Majesty's ships will strictly attend to the following regulations with regard to visiting merchant vessels suspected of fraudulently assuming the French flag:

2. In virtue of the immunity of national flags, no merchant vessel navigating the high seas is subject to any foreign jurisdiction. A vessel of war cannot therefore visit, detain, arrest, or seize (except under the treaty) any merchant vessel not recognized as belonging to her own nation.

3. The colors of a vessel being *prima facie* the distinctive mark of her nationality, and consequently of the jurisdiction to which she is subject, it is natural that a merchant vessel on the high seas, on finding herself in presence of a ship-of-war, should hoist her national flag in declaration of her nationality. So soon as the ship-of-war has made herself known by the display of her own colors, the merchant vessel should accordingly hoist her proper national flag.

4. Should the merchant vessel refuse to do so, it is admitted by both governments that a warning may be given to her; first, by firing a blank gun, and should that be without effect, it may be enforced by a second gun, shotted, but pointed in such a manner as to insure that she is not struck by the shot.

5. Immediately that the colors are hoisted, and that the merchant vessel has in this manner announced her nationality, the foreign vessel of war can no longer pretend to exercise a control over her. At most, in certain cases, she may claim the right to speak with her, and demand answers to questions addressed to her by a speaking trumpet, or otherwise, but without obliging her to alter her course. When, however, the presumption of nationality resulting from the colors

which may have been shown by a merchant vessel, may be seriously thrown in doubt, or be questionable from positive information, or from indications of a nature to create a belief that the vessel does not belong to the nation whose colors she has assumed, the foreign vessel of war may have recourse to the verification of her assumed nationality.

6. A boat may be detached for this purpose towards the suspected vessel, after having first hailed her to give notice of the intention. The verification will consist in an examination of the papers establishing the nationality of the vessel; nothing can be claimed beyond the exhibition of these documents.

7. To inquire into the nature of the cargo, or the commercial operations of the vessel, or any other fact, in short, than that of the nationality of the vessel, is prohibited. Every other search, and every inspection whatever, is absolutely forbidden.

8. The officer in charge of the verification should proceed with the greatest discretion, and with every possible consideration and care, and should quit the vessel immediately that the verification has been effected, and should offer to note on the ship's papers the circumstances of the verification, and the reasons which may have led to it.

9. Except in the case of legitimate suspicion of fraud, it should never otherwise be necessary for the commander of a foreign ship-of-war to go on board, or to send on board a merchant vessel. Apart from the colors shown, the indications are numerous which should be sufficient to satisfy seamen of the nationality of a vessel.

10. In every case it is to be clearly understood, that the captain of a ship-of-war who determines to board a merchant vessel, must do so at his own risk and peril, and must remain responsible for all the consequences which may result from his own act.

11. The commander of a ship-of-war, who may have recourse to such a proceeding, should in all cases report the fact to his own government, and should explain the reason of his having so acted; a communication of this report, and of the reasons which may have led to the verification, will be given officially to the government to which the vessel may belong which shall have been subjected to inquiry as to her flag.

In all cases in which this inquiry shall not be justified by obvious reasons, or shall not have been made in a proper manner, a claim may arise for indemnity.

You will clearly understand that the foregoing instructions have reference only to vessels navigating under the French flag, and are intended mutually to prevent misunderstanding between the British and French governments, but cannot affect the vessels of other nations with whom Great Britain has treaties for the suppression of the slave-trade, or deprive her Majesty of the right to seize and detain vessels engaged in the slave-trade, when not entitled to the protection of any national flag.

I am, sir, your most obedient servant,

To _____.

_____.

Copy of the instructions which will be given to French cruisers.

1. L'abrogation du traité passé avec la Grande Bretagne pour la suppression de la traite a fait sentir aux deux gouvernements Français et Anglais la nécessité d'un arrangement provisoire relativement à la visite des navires marchands soupçonnés d'arborer indûment le pavillon Anglais.

2. A l'abri de l'indépendance de son pavillon national, un navire de commerce naviguant en pleine mer n'est sujet à aucune juridiction étrangère, à moins d'y être autorisé par un traité. Un bâtiment de guerre ne peut donc visiter, retenir, arrêter et saisir que les navires de commerce qu'il reconnaît avoir la même nationalité que lui.

3. Le pavillon d'un navire étant de primeabord la marque distinctive de sa nationalité, et conséquemment de la juridiction de laquelle il relève, il est naturel qu'un navire de commerce passant en pleine mer en vue d'un bâtiment de guerre, hisse son pavillon pour faire connaître sa nationalité, dès que le bâtiment de guerre s'est fait reconnaître en arborant ses couleurs et marques distinctives, le navire marchand avis donc également hisser son pavillon de nation.

4. S'il néglige de le faire, les deux gouvernements admettent qu'on peut lui donner un avertissement en tirant d'abord un coup de canon à poudre, et si celui-ci reste sans effet, un second avertissement en tirant un coup de canon chargé à boulet, mais pointé de manière à ne pas l'atteindre.

5. Dès qu'en arborant ses couleurs le navire marchand a établi sa nationalité, le bâtiment de guerre étranger ne peut plus prétendre à exercer le moindre contrôle sur lui. Tout au plus peut-il, dans certains cas, user le droit de se faire raisonner, c'est à dire de l'inviter à répondre à des questions faites au porte-voix ou autrement sans toutefois contrarier sa route. Si cependant la présomption de nationalité résultant des couleurs qui auraient été arborées par un navire de commerce peut être sérieusement mise en doute, soit par suite de renseignements positifs, soit par suite d'indices de nature à faire croire que ce navire n'appartient pas à la nation dont il a pris les couleurs, le bâtiment de guerre étranger peut recourir à la vérification de cette prétendue nationalité.

6. Un canot pourra dans ce but être envoyé à bord du navire suspect après qu'on l'aura hélé pour lui donner avis de cette intention. La vérification consistera dans l'examen de papiers constatant la nationalité du navire, rien ne pourra être réclamé de plus que la présentation de ces pièces.

7. Toute enquête sur la nature du chargement, sur les opérations commerciales des dits navires, sur un autre fait, en un mot, que leur nationalité, toute recherche, toute visite, est absolument interdite.

8. L'officier chargé de cette vérification devra procéder avec tous les égards et tous les ménagements possibles; il devra quitter le navire dès que la vérification sera effectuée, et offrir de noter sur les papiers du bord le fait, les circonstances de la vérification, et les raisons qui l'auront déterminé à la faire.

9. Hors le cas de légitime suspicion de fraude, il ne devra d'ailleurs

jamais être nécessaire que le commandant d'un bâtiment de guerre étranger ait à monter ou à envoyer à bord d'un navire marchand, tant sont nombreux les indices qui, abstraction faite des couleurs, révèlent à l'œil exercé d'un marin la nationalité d'un navire.

10. En toute hypothèse il est bien entendu que le capitaine d'un bâtiment de guerre qui se décide à monter, ou à envoyer à bord d'un navire de commerce, le fait toujours à ses propres risques et périls, et demeure responsable de toutes les conséquences de un acte.

11. Le commandant d'un bâtiment de guerre qui aura en recours à cette mesure, devra, dans tous les cas, en faire l'objet d'un rapport à son gouvernement, et l'informer des motifs évidents qui l'ont fait agir. Communication de ce rapport, et des motifs qui ont provoqué cette constatation, sera officiellement donnée au gouvernement auquel appartient le navire qui aura été soumis à la vérification de son pavillon.

Toutes les fois que celle-ci ne sera pas justifiée par des raisons suffisantes, on n'aura pas été faite d'une manière convenable, il y aura lieu à indemnité.

Bien que les instructions qui précèdent s'appliquent particulièrement aux navires sous pavillon Anglais, et qu'elles aient pour but, de prévenir toute mésintelligence entre les gouvernements de la France et de la Grande Bretagne, il est bien entendu qu'elles devront régler les rapports des officiers Français avec les navires de toutes les nations avec lesquelles le gouvernement de l'Empereur est en paix.

Count de Sartiges to Mr. Cass.

[Translation.]

LEGATION OF FRANCE IN THE UNITED STATES,
Washington, May 9, 1859.

SIR: I have heretofore had the honor of communicating to you the instructions which the government of the Emperor had issued to the officers of the imperial navy in relation to the mode of inquiry into the nationality of merchant vessels met on the seas by public armed vessels.

Instructions of the like nature, communicated to you by the British minister at Washington, have also been issued to the officers of the English navy.

Now, the government of the Emperor, agreeing with that of her Britannic Majesty as to the steps to be taken, as they have done as to the drafting of the instructions he issued to the officers of the French and British navy, respectively, and referring to the spirit and the letter of the answer which you have done me the honor of addressing to me on the 25th of January ultimo, directs me to invite the government of the United States to adopt for the cruisers of the United States navy instructions identical to those which have been temporarily adopted by the governments of England and France for their military navy.

Accept, sir, the assurances of my high consideration.

SARTIGES.

Hon. General Cass, &c., &c., &c.

Extract from a dispatch of his excellency Count Walewski to Count de Sartiges, dated April 13, 1859, and privately communicated to Hon. Lewis Cass May 7, 1859.

“You acquaint me with the fact that General Cass is waiting for our final answer to the letter which he addressed you on the 27th of January last, in relation to the inquiry into the flag, with a view of bringing the whole of the question before the President and his cabinet, and of drafting on that subject a categorical *exposé* of their views. What the Secretary of State of the United States desired to know was whether the construction which he put, in his forementioned letter, on our communication touching the ascertainment of the flag, was entirely conformable to our way of viewing the question. After an attentive reading of General Cass’ letter, and having communicated it to the minister of marine, I found myself agreeing with him in considering the explanations which it contains as perfectly corresponding, and on all points, with the sense of our communication. You may, therefore, declare to General Cass that the doctrine which he lays down is really that which the government of the Emperor maintains on its part, and that it does not understand in a sense different from that in which they are understood by the American cabinet those rules which it has proposed for the exercise of the power of inquiring into a flag, and to the adoption of which, by way of temporary instructions to the cruisers of both nations, the British government has just consented.”

Lord Lyons to Mr. Cass.

WASHINGTON, May 9, 1859.

SIR: I had, some days ago, the honor to place in your hands a copy of the instructions which her Majesty’s government have given to the officers of the royal navy relative to the mode in which the nationality of merchant vessels is to be verified by ships-of-war meeting them at sea.

Identical instructions have been issued to the French navy, and have been communicated to you by the French minister at Washington.

Her Majesty’s government, being agreed with the government of the Emperor, as well in taking the present step as in drawing up the instructions lately issued to the officers of the British and French navies, have directed me to invite the government of the United States to adopt for their cruisers instructions identical with those which have been provisionally adopted for their own ships-of-war by the governments of Great Britain and France.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

LYONS.

Hon. LEWIS CASS, &c., &c., &c.

Mr. Cass to Lord Lyons.

DEPARTMENT OF STATE,
Washington, May 12, 1859.

MY LORD: Your note of the 9th instant, in reference to "the instructions which her Majesty's government have given to the officers of the royal navy relative to the mode in which the nationality of merchant vessels is to be verified by ships-of-war meeting them at sea" has been received. A draft of these instructions had been communicated to me by your predecessor, Lord Napier, under date of the 12th of March last, with the hope expressed by his lordship that they might prove "acceptable to the governments of France and the United States." Instructions of a similar character had been also communicated to this government by the minister of France, and as expressing the general views of the President concerning them I inclose a copy of my reply to that minister, dated January 25, 1859. Since that time I have received from Count Sartiges an extract from an official dispatch of Count Walewski, dated April 13, which fully sustains the doctrines of my note of January 25, and the interpretation, which, in conformity with those doctrines, I had placed upon the French *projet*. There can no longer remain any doubt, therefore, that the United States, Great Britain, and France are entirely agreed in reference to the principles which they hold respectively upon this important subject. As stated in the draft furnished by Lord Napier, "no merchant vessel navigating the high seas is subject to any foreign jurisdiction. A vessel of war cannot therefore visit, detain, arrest, or seize (except under treaty) any merchant vessel not recognized as belonging to her own nation." And as a necessary consequence from this rule, it is added in the same draft, that "in every case it is to be clearly understood that the vessel of war which determines to board a merchant vessel, must do so at her own risk and peril, and must remain responsible for all the consequences which may result from her own act."

These extracts which fix the responsibility of every government whose officers interrupt the voyage of a merchant vessel upon the ocean, suggest very strongly the adoption by each government of such instructions to its own officers as will tend to make them appreciate this responsibility, and lead them to observe great caution in acting upon their suspicions against such a vessel. The same extracts supply a very just limitation, also, in respect to the cases to which the instructions can, under any circumstances, apply. Leaving out of view the crime of piracy, which happily is now seldom committed, the only instance (except under treaty) in which a ship-of-war may be excused in visiting, detaining, arresting, or seizing any merchant vessel bearing a foreign flag, is when such vessel is for good and sufficient reasons, believed to belong in fact to the country of the visiting ship. A slaver cannot be detained by a foreign vessel, because it is a slaver unless the right of detention in such a case has been conferred by the government to which the slaver belongs, upon the government to which the foreign vessel belongs, except so far as it may have parted with it by treaty, every nation has the exclusive care of its own flag

upon the high seas. The responsibility of each government for its respective officers is thus very much limited by the comparatively small number of cases in which the detention of a merchant vessel can, under any circumstances, occur. The instructions submitted by Lord Napier, seem very properly calculated to limit it still further, and in the exercise of a similar caution, this government will issue renewed instructions to its naval officers with reference to this subject, a copy of which, as soon as they have been issued, shall be furnished you for transmission to London. In the meantime it is hoped that by the substitution of steamers for sailing vessels on the coasts of Africa and Cuba, the abuse of either the American or British flag, for the purposes of the slave-trade, may be effectually prevented.

Your lordship will perceive from the inclosed copy, that this government concurs with the governments of Great Britain and France as to the propriety of an exhibition of her flag by every merchantman on the ocean, whenever she meets a ship-of-war, either of her own or any foreign nation. Just in proportion to the protection which she claims by virtue of her flag, should be the alacrity with which, on all proper occasions, she should display it; nor can I perceive the slightest reason why this duty should be avoided by any honest vessel. This view of the subject will be made known to the merchant marine of the United States by circular-letters from the Treasury Department to the collectors of the customs, who will request its observance from all merchant captains. The President has no authority to compel this observance, but he will not hesitate to promote it by any proper means which may be within his power.

In reference to the friendly approach of a suspected vessel for the purpose of observation, it is not perceived that any objection can exist to such a course in cases where this is practicable, and where the suspicions are of such a character as to justify any observation at all. The liberty of approach, under such circumstances, has been distinctly affirmed by the Supreme Court of the United States. In the case of the *Marianna Flora* (11 Wheaton, R. I.) the law was laid down as follows: "Merchant ships are in the constant habit of approaching each other on the ocean, either to relieve their own distress, to procure information, or to ascertain the character of strangers; and, hitherto, there has never been supposed in such conduct any breach of the customary observances, or of the strictest principles of the law of nations. In respect to ships-of-war sailing, as in the present case, under the authority of their government to arrest pirates and other public offenders, there is no reason why they may not approach any vessels descried at sea, for the purpose of ascertaining their real characters. Such a right seems indispensable for the fair and discreet exercise of their authority; and the use of it cannot be justly deemed indicative of any design to insult or injure those they approach, or to impede them in their lawful commerce. On the other hand, it is as clear that no ship is, under such circumstances, bound to lie by or await the approach of any other ship."

Ordinarily the close observation of a merchant vessel will very well point out its national character. There are numerous indications which, to the practised eye of a seaman, furnish conclusive evidence

on this subject. Should a further examination in any case be thought justifiable, it is difficult to perceive how this can be accomplished against the will of a suspected vessel by any peaceful mode. For such a case it is hardly practicable to make regulations in advance. The rules which prevail in time of war to prevent conflicts between neutrals and allies and belligerents, and even between armed vessels of the same nation, are not properly applicable to a state of peace, and every case of the kind referred to may, perhaps, be left most wisely to be determined by its own particular circumstances, under the general provisions of the law of nations.

Before closing this dispatch, I take the liberty to advert for a moment to a single passage in the "instructions" which I do not fully understand. It is the final paragraph of the draft inclosed to me by Lord Napier, in which allusion is made to the right of her Majesty's officers "to seize and detain vessels engaged in the slave-trade when not entitled to the protection of any national flag." The number of ships which go out upon the ocean without any nationality must be so inconsiderable as hardly to deserve the notice even of this general exception: and the language may possibly be understood, therefore, as embracing those vessels which are induced, after capture, to throw their papers overboard, under the circumstances referred to in my note to Lord Napier of April 10, 1858, and my dispatch to Mr. Dallas of ~~February 23,~~ 1859. The practice to which I allude is not one, I am persuaded, which can receive the sanction of the British government; but as the objections to it are fully stated in the dispatches just mentioned, I content myself with thus having recalled the subject to Lord Malmesbury's attention.

I have the honor to be, my lord, with high consideration, your lordship's obedient servant,

LEWIS CASS.

Lord LYONS, &c., &c., &c.

Mr. Cass to the Count de Sartiges.

DEPARTMENT OF STATE,
Washington, May 12, 1859.

SIR: Your note of the 9th instant, in reference to the instructions which France has issued to its naval officers relative to the mode of recognizing the nationality of merchant vessels meeting them at sea, has been received.

In the communication which I addressed to you under date of January 25, the general views of the President on this subject were fully stated, and I am glad to learn that these views are cordially sustained by the government of France.

On the 12th of March last I received from Lord Napier a copy of the instructions on this subject which were proposed to be given by the government of Great Britain to the officers of her Majesty's navy, and which I am informed by Lord Lyons have since been issued.

These instructions are similar in their character to those which accompanied your note of December last, and in further explanation of the views of the President concerning them, I enclose herewith a copy of a note this day addressed on the subject to Lord Lyons.

As soon as the instructions there referred to, to the officers of the navy of the United States, have been determined on a copy of them will be forwarded to you for transmission to Paris.

I avail myself of this opportunity to renew to you, sir, the assurance of my high consideration.

LEWIS CASS.

The Count de SARTIGES, &c., &c., &c.

Memorandum from Lord Lyons.

The instructions respecting the verification of the nationality of merchant vessels at sea, as finally agreed upon by the governments of Great Britain and France, differ slightly from those transmitted to the State Department in Lord Napier's note of the 12th March, 1859.

A printed copy of both the English and French text of the instructions finally agreed upon was put into General Cass' hand by Lord Lyons, at the State Department, on the 23d April, 1859.

MAY 14, 1859.

Mr. Cass to Mr. Dallas.

No. 175.]

DEPARTMENT OF STATE,
Washington, May 14, 1859.

SIR: Accompanying this you will receive copies of the letters which have been addressed by this department, under the instructions of the President, to the ministers of Great Britain and France in this country, respecting the examination into the nationality of merchant vessels met at sea under suspicious circumstances by a vessel of war. So soon as the instructions referred to are prepared by the Navy Department, a copy of them shall be forwarded to you.

Arrangements are making to send two steamers to the coast of Africa, and three or more to the coast of Cuba, agreeably to the intimation in my letter to you of February 23, 1859; and in the course of a few days I shall discuss with Lord Lyons the mode in which the proposition made by this government to the British government, to substitute steam vessels for sailing vessels, as provided for by the Ashburton treaty, can be best carried into effect.

I am, sir, respectfully, your obedient servant,

LEWIS CASS.

GEORGE M. DALLAS, Esq., &c., &c., &c.

List of accompanying papers.

Lord Lyons to Mr. Cass, May 9, 1859. Copy.
 The Count de Sartiges to Mr. Cass, with an accompaniment, May 9, 1859. Translation.
 Mr. Cass to Lord Lyons, May 12, 1859. Copy.
 Mr. Cass to Count de Sartiges, May 12, 1859. Copy.
 [These papers will be found in their chronological order in this report.]

Mr. Cass to Lord Lyons.

DEPARTMENT OF STATE,
 Washington, July 18, 1859.

MY LORD: I have the honor to transmit to you herewith, for the information of her Britannic Majesty's government, extracts from the instructions of the 6th instant, given by the Navy Department to Captain William Inman, appointed to command the squadron of the United States on the African station.

I avail myself of this opportunity to renew to your lordship the assurance of my high consideration.

LEWIS CASS.

Lord LYONS, &c., &c., &c.

Same, *mutatis mutandis*, to Viscount Treilhard.

Extracts from instructions to Captain William Inman, appointed to command African squadron, dated July 6, 1859.

In regard to your duties in suppressing the slave-trade, the following views are stated for your guidance:

The United States are sincerely desirous wholly to suppress the traffic, and with that view have declared it piracy. They have, by their treaty with England, come under specific stipulations upon the subject, to which your particular attention is called. The object which the two governments have in view, and the mode in which they propose to accomplish it, will at once be perceived from the plain language of the eighth article of the treaty. I need not impress upon you the importance of strictly observing this stipulation and preserving inviolate the pledged faith of your country upon this point. Nevertheless, the following suggestions may be found useful in enabling you to

understand fully and precisely the views of your own government upon this delicate and interesting subject.

The government does not acknowledge a right in any other nation to visit and detain the vessels of American citizens engaged in commerce. The *flag* which the vessel wears is *prima facie*, although it is not conclusive proof of nationality; it is a mere emblem, and it loses its true character when it is worn by those who have no right to wear it.

Any vessel that displays the American flag claims to be an American, and therefore may be rightfully boarded and examined by an American cruiser, if there be any circumstances attending her to justify a suspicion that she is not what she professes to be. But this privilege does not extend to the cruisers of any other nation. The United States do not claim that the mere hoisting of their flag shall give immunity to those who have no right to wear it. Such a pretension would subject their flag to degradation and dishonor, because it would make it a cover for piracy and other crimes of similar atrocity; but their own citizens who rightfully display it are entitled to absolute immunity and protection. You will, therefore, at all times, be prompt to prevent the search or detention of vessels of the United States on the high seas, in time of peace, by the armed vessels of any other power. Should a vessel of the United States falsely assume the flag of any other nation, it will constitute no protection; you will, however, in all such cases, where from information or appearance you have just reason to believe that the flag of any other nation has been falsely assumed by an American vessel, proceed with great care and caution. If it be ultimately made to appear that she is a vessel of the United States, the case will be free from any difficulty or embarrassment. But if, on the other hand, she is in fact a vessel of any other nation, then you have no right whatever to arrest, detain, board, search, or examine her, or direct her from her course. The authority to do so depends upon her nationality, whatever appearances may be, or whatever may be your information of her character. You should, therefore, in all cases of apparently well-grounded suspicion, proceed with great consideration and caution in order to guard against mistake. You may approach the suspected vessel and speak with her, showing your own flag. You may request her to display her flag. If she refuse or omit to do so, you may discharge towards her a gun loaded with a blank cartridge only. If she still refuse or omit to display her colors, you may discharge a shotted gun, pointing it so as not to hit or endanger her. If she display the colors of any foreign nation, you can proceed no further except upon apparently well-grounded suspicion of fraudulent assumption of foreign colors by her, and upon your own responsibility. In such case it would be a reasonable cause, with due notice of your intention, to send a boat to her for verification of her nationality. If she exhibits the requisite authentic documents to establish her foreign nationality, you will neither board her, nor detain her, nor inquire into her commercial operations, nor exercise any authority over her, and if your course has been reasonable both with regard to the extent and manner of the verification, any claim of indemnity for detention

of the vessel or interruption of the voyage, especially where the fault lies with her, will be nominal or of little account. You will note the circumstance upon her papers if requested; and in all cases immediately report the facts to your own government, that they may be communicated to the government of the country to which the suspected vessel belongs.

The United States, in stipulating to keep a squadron on the coast of Africa, meant to give to England and all the world an assurance of her determination and ability to protect her own flag against abuse, and thus remove all pretext for any interference with it by other nations.

England accepted this stipulation as satisfactory, so far as she was concerned, and therefore she has no reason, and, I trust, no wish to invade the rights of the United States in that respect. I advert to the subject here only to put you in possession of the views of your own government for your guidance in forming such arrangements as you may find it convenient to make for coöperation with British cruisers. I would consider it highly desirable that a vessel of each nation should, as far as possible, cruise in company with a vessel of the other, so that each might be in a condition to assert the rights and prevent abuse of the flag of its own country. In this way all just ground of difference or collision would be removed, while the harmonious coöperation of the two powers will go far to insure the full accomplishment of the common object in the suppression of the slave-trade.

It is to be borne in mind that while the United States sincerely desire the suppression of the slave-trade, and design to exert their power in good faith for the accomplishment of that object, they do not regard the success of their efforts as their paramount interest, nor as their paramount duty. They are not prepared to sacrifice to it any of their rights as an independent nation, nor will the object in view justify the exposure of their own people to injurious and vexatious interruptions in the prosecution of their lawful pursuits. Great caution is to be observed on this point.

* * * * *

I am, respectfully, your obedient servant,
ISAAC TOUCEY.

Mr. Cass to Mr. Dallas.

No. 186.]

DEPARTMENT OF STATE,
Washington, July 23, 1859.

SIR: I transmit extracts from the instructions of the 6th instant given to Captain William Inman, appointed to command the squadron of the United States on the African station. A copy of the same paper has already been communicated to the English and French ministers here, who will, of course, forward it to their respective gov-

ernments. But it is deemed advisable, however, that your legation should have a copy for reference or any other necessary purpose.

I am, sir, respectfully, your obedient servant,

LEWIS CASS.

GEORGE M. DALLAS, Esq., &c., &c., &c.

Same, mutatis mutandis, to John Y. Mason, esq., minister of the United States at Paris.

[The extracts referred to accompany Mr. Cass' note to Lord Lyons of the 18th of July, 1859.]