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CORRESPONDENCE

WITH THE

UNITED STATES' GOVERNMENT

ON THE QUESTION OF

RIGHT OF VISIT.

Presented to both Houses of Parliament by Command of Her Majesty.
1859.

LONDON:
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Correspondence with the United States' Government on the Question of Right of Visit.

No. 1.

Lord Napier to the Earl of Malmesbury.—(Received May 10.)

(Extract.)

Washington, April 19, 1858.

I HAVE the honour to transmit to your Lordship herewith a note addressed to Her Majesty's Legation by the Secretary of State in reply to various communications which I have made to the Government of the United States, under the instructions of the Earl of Clarendon, respecting the fraudulent adoption of the American flag in the prosecution of the African Slave Trade.

The Government of the United States will maintain a squadron of the force prescribed by Treaty.

Your Lordship will observe that General Cass recommends restrictive measures on the coast of Cuba, the only remaining market to which the Slave Trade is directed. He also refers with commendation to that Article in the Treaty of 1842, by which the Contracting Parties engage to use their remonstrances with the Governments which do not prevent the exercise of the forbidden Traffic in their dominions.

In consequence of these observations, I have expressed to General Cass my hope that he would enable me to state to your Lordship that the United States' Government would despatch a naval force to the coast of Cuba; for I apprehended that the slavers, in approaching that island, would almost invariably hoist the flag of the United States, and thus elude the inspection of Her Majesty's cruisers. He had indicated the spot at which the remedy could be effectually applied; would he assist in applying it? I added that Her Majesty's Government had already anticipated the views of the American Cabinet, and had sent three or four gun-boats or light steamers to the Cuban waters.

General Cass replied that he could not promise to send any vessel to act against the slavers on the coast of Cuba; and on my pressing the inconsistency of his position, he answered that this was not only a question of what was right, but of what was possible. Here I must grant that the Secretary of State did not speak without valid cause. The American navy is ill supplied with light vessels, and it may be doubted whether Congress would sanction any pecuniary appropriation for the purpose indicated.

Recalling the Article of the Ashburton Treaty alluded to above, I inquired whether General Cass would state to me officially that the Government of the United States had ever remonstrated with that of Spain in respect to the importation of enslaved negroes in the Island of Cuba; and moreover, whether he would officially engage to do so at the present time.

General Cass replied that he presumed such remonstrances might have been offered. He did not know for certain that they had been so, nor could he at that moment promise to make the desired representations to the Cabinet of Madrid. He did not see, however, any objection to such a step, and it was certainly prescribed by the terms of the Treaty.

Inclosure 1 in No. 1.

General Cass to Lord Napier.

My Lord,

Department of State, Washington, April 10, 1858.

YOUR several letters respecting the African Slave Trade have been received at this Department, but I have been prevented from answering them at an earlier day by the pressure of other duties, and by the difficulty of procuring information, not easily attainable, but necessary for their proper consideration. They have been submitted to the President, and I am instructed to communicate to your Lordship his views on the subjects they present for the determination of this Government.

While I concur with your Lordship in the opinion that the efforts of your Government have been unceasing for the extinction of this Traffic, still I must be permitted to say, that its hope of the "heartly co-operation of the naval forces of the United States" might safely have been entertained, without appealing to the example of Great Britain. The officers of the Navy of the United States need no encomium from me, nor shall I pronounce one upon them. But I assure your Lordship, that when assigned to the irksome task of watching a long, desolate, and unhealthy coast, they will perform their duty, honourably and efficiently, without needing any other motive of action but that which a sense of duty inspires. Such devotion to the service is a part of their character and of the history of their country.

The United States have not been less anxious than Great Britain, for the extermination of this commerce in enslaved Africans, and they have given the most substantial proofs of this disposition, by acts both of legislation and of administration. If the American Government was not the first, it was among the first, to prohibit by legal enactments, and to prevent by severe punishment, the longer continuation of this Traffic, which had become repugnant to the opinion and feelings of the age. Lord Brougham, in a debate in the British House of Lords, when this subject was referred to, honourably and truly remarked, that "it should be borne in mind that the United States, at the very earliest period they were enabled to do so by the Federal Union, had adopted the abolition of the Slave Trade, and were, in fact, the first to make it piracy for any one of its subjects to carry it on."

But the best method of effecting the object, is a practicable problem of very difficult solution. The obstacles in its way were at first overlooked in the sanguine anticipations which were indulged of immediate success. Experience has come to test the measures proposed, and they have been found inadequate to the extinction of the evil. So much so that, in the opinion of your Government, its "present activity" demands increased exertions on the part of the United States, with a view to accomplish the object. Those exertions, it is suggested, should be directed to the coast of Africa, in order to render the blockade more effectual, and especially to examine and deal with vessels bearing the American flag and suspected of being engaged in this trade.

This system of a joint blockade has been pursued for some years, and the benefit it has produced bears no reasonable proportion, I regret to say, to the expenditure of life and treasure it has cost; but this failure need not discourage the anxious hopes of Christendom.

There is another method of proceeding, without the dangers, and difficulties, and inefficiency which beset a blockade, and which is sure to succeed if adopted and persevered in, and that is, to close the slave-marts of the world, or rather of the Island of Cuba, which is now almost the only region where the slave-dealer can find a market. If these unfortunate victims could not be sold, they would not be bought. To shut the ports of Cuba to their entrance, is to shut the ports of Africa to their departure; and to effect this, nothing would seem to be wanting but the cordial co-operation of the Spanish Government. The example of the United States is sufficient to show that, however extensive a country may be, it can be rendered inaccessible to this evil by a sound state of public opinion, and by rigid laws rigidly executed. The introduction of a slave into this country is a fact which I believe the present generation has not witnessed. And Brazil also, with her long line of maritime frontier, has succeeded, by her legislation and by the faithful execution of it, in rescuing herself from the reproach of participating in this great crime as well

national as individual. And it is due to the honourable course of the Imperial Government to state that, on the application of the United States, it has lent its aid towards procuring evidence necessary for the conviction of persons, prosecuted in this country for the offence of slave-trading. The conventional arrangements which exist between Great Britain and France and Spain for their mutual co-operation in the suppression of the Slave Trade, are very imperfectly known to me; but it is understood that Spain has entered into engagements with Great Britain, if not with France also, that she will use her best exertions to prevent the importation of slaves into her dominions. This pledge, if given, has certainly not been redeemed, though it is difficult to believe that the Spanish Government would resist or neglect the firm remonstrances of these two great Powers, or even of Great Britain alone, if she alone has the right, by Treaty stipulations, to demand of Spain the faithful performance of duties which she has voluntarily assumed. Upon the course of the Spanish Government far more depends than upon the most rigorous blockade of the African coast.

The United States have no suggestions to make respecting the most expedient measures to adopt in Africa, with a view to aid the operations of the squadrons employed by our respective Governments, or instead of them, should the conviction of their inadequacy to effect the desired object induce the discontinuance of their services. 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 and improvement 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 blockhouses, 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 are to be found.

The negotiators of the Ashburton Treaty seem to have been among the few who doubted the efficacy of a blockade for the suppression of this Trade. Their provisions, as shown by Article IX of the Treaty, have been strikingly confirmed by experience:

“Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the Slave Trade, the facilities for carrying on that Traffic, and avoiding the vigilance of cruisers, by the fraudulent use of flags, and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed unless all markets be shut against the purchase of African negroes, the parties to this Treaty agree that they will unite in all becoming representations and remonstrances, with any and all Powers within whose dominions such 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 for ever.”

The obstacles in the way of the successful operation of the blockade system have been rendered sufficiently obvious by the experiment that has been made. The extent and indentations of the coast, the insalubrity of the climate, the paucity of the civilized settlements, and the want of co-operation on the part of the native population, together with the measures resorted to by the slave-traders, render it difficult, almost impracticable indeed, hermetically to close this long sea-margin, occupying the tropical regions of the continent.

But there are other causes in operation, tending to affect the hopes heretofore so generally indulged, of the success of blockading squadrons upon the coast of Africa. The same state of things which has stimulated this trade into renewed activity, by the increased profits attending it, has produced a marked effect upon public opinion in Europe, and may lead to a relaxation in the measures for its suppression. The deficiency of labour in the tropical possessions of England and France, and the consequent falling off in their valuable products, now constitute a subject of anxious inquiry in both countries. The lamentable condition to which those once rich and flourishing Colonies have been reduced under expectations which have not been realized, and the indolence and distress of the emancipated population, present matters of grave reflection, as well for the statesman as for the philanthropist. Means are in progress to remedy the evil, by the importation of labourers, but of their precise nature, and of the extent to which they have been, or are proposed to be, carried, the information which has reached me is not as definite as is desirable. Independently of the supplies procured in other quarters

of the globe, it is known that measures, with this view, have been taken in France, and have met with the approbation of the Government, for furnishing their Colonies with labourers by "African emigration," as it is called; and that not only "freemen" may be engaged, but those "also who have been previously slaves." It is known that communications upon the subject have passed between the British and French Governments, and that the former "would not object to the French scheme, while the wants of British Colonies are being supplied by the Coolie trade." It is also known, that the British Government apprehending this process of supply might prove an "indirect obstacle" to the extinction of the Slave Trade, has proposed to the Government of France to substitute "Indian emigration for African emigration;" and that this suggestion is now a subject of discussion between the two Governments. Whatever guards may be thrown around this plan of agricultural relief, it is still a doubtful experiment, necessarily subject to great abuses. And this apprehension is confirmed by recent events, and, among others, by a statement made a few days since in the British House of Lords, where it was said, that "this system meant nothing more nor less than purchasing negroes on the coast of Africa, and pretending to ship them as free negroes." It was also said upon the same occasion, and by the same distinguished speaker, that there was a frightful mortality among these "emigrants," and that they were treated precisely as the slave-negroes used to be treated in the time of the old African Slave Trade. The Earl of Malmesbury said, that "between this new French plan of carrying free negroes and the old Slave Trade, there was a distinction without a difference; and he need not, he hoped, assure his noble friend that the Government would use all their endeavours to discourage the practice."

The inception and partial execution of these measures have produced an unfavourable impression, and have led to a fear in the public mind that the plan will practically prove to be but another form of slave-trading. Official reports have been received from the American African squadron confirming this opinion, and the Message of the President of Liberia to the Legislature, in December last, presents facts still further justifying the apprehensions to which this scheme has given rise. He states that its effects have already been felt, and that the measures have excited wars among the native tribes, with a view to the capture of prisoners, and their sale to the European adventurers.

But it is not at all necessary that I should enter into the consideration of these means of supply, except so far as they bear upon the question of the efficacy of a blockading squadron. For the subject has no other interest for the United States than as a general question, and, however extensive in its operation, still without peculiar application to them. They have no tropical colonies, reduced from a state of prosperity to adversity, and which they seek to redeem from this condition by the introduction of "involuntary emigrants," of any colour whatever, for the purpose of carrying on the labours of agriculture. They have no necessity, nor any design, to resort to other countries for a supply of forced labourers, whether coolies, or emigrants, or apprentices, or by whatever name denominated; or of any labourers who, if not compelled by actual force to enter into distant servitude, are compelled thereto by considerations little less voluntary, and in utter ignorance of the true condition into which they are about to enter. This state of things, while it offers no justification for the African Slave Trade, indicates a relaxation of public opinion, which has already made itself evident, and has led to measures which may impede the operations and efficiency of the squadron of observation and repression.

That this change of opinion, thus brought about, and the efforts to repair, in some way, the evils that are felt, have produced their effect upon public sentiment, is undeniable, and they may have operated, also, in some quarters, to diminish that repugnance to the Slave Trade which its nature, and the cruel circumstances attending it, are so well adapted to inspire. But, independently of the obstructions, both physical and political, to which I have adverted, and which stand in the way of the successful operation of the squadrons of suppression, there are important considerations, nearly connected with national rights, which offer still graver subjects for the consideration of this Government.

The Slave Trade has been recognized by the nations of the earth as a lawful commerce, from the earliest period of history. When a growing sense of its injustice became prevalent, in more recent times, and induced a very general desire for its abolition, measures were proposed by the British Government, and, to some extent,

carried into operation, which, if permanently established, might have destroyed the free commercial intercourse of the world.

Their character may be understood by the following remarks of that eminent Admiralty Judge, Lord Stowell, which are equally honourable to his wisdom and his independence. In the decision of the case of a French vessel seized upon the coast of Africa, he said, "No nation can exercise a right of visitation and search upon the common and unappropriated parts of the ocean, except from the belligerent claim. No nation has the right to force their way to the liberation of Africa, by trampling upon the independence of other States, on the pretence of an eminent good, by means that are unlawful, or to press forward to a great principle by breaking through other great principles which stand in their way." The principle involved in this assumption of power, was far more extensive than the immediate application. If established by force, or acquiesced in by general consent, it would have enabled every Government to denounce any branch of commerce—the Slave Trade, the opium trade, the trade in ardent spirits, or any other interchange of commodities unacceptable to it—and to take measures for its suppression. The United States early remonstrated against this dangerous pretension, and they have continued and made known their opposition to the claim of any right of search; whatever form this has assumed, or under whatever circumstances it has been exercised. And they were not alone; for the freedom of commerce found an earnest and able advocate in the British Parliament, in the person of the Duke of Wellington, who, in a debate in the House of Lords, on the 10th of July, 1839, said, "The clause in question made it lawful to detain any vessels whatever on suspicion on the high seas, and demand their papers; and the persons exercising such authority were, moreover, indemnified for all the consequences. Was it intended that the vessels of any Power in Europe might be searched, and afterwards allowed to proceed on their voyage, whether we had Treaties with such Powers or not? Such a law would be a perfect novelty in the legislation of this country, and the House ought well to pause before they adopted it."

Again, on the 10th of August, the Duke remarked, "It was well known that with the United States we had no Convention; there were indeed engagements, made by diplomatic notes, but nothing went to show the least disposition on their part to permit the right of detention and the search of papers; and if there was one point more to be avoided than any other, it was that relating to the visitation of vessels belonging to the Union. He warned Government not to proceed, but rather to issue an Order in Council or a declaration of war."

The Bill passed, however, notwithstanding the opposition of the Duke, who said "it still retained its criminal character—a breach of the Law of Nations," &c. And well did it deserve this condemnation; for it gave to the commanding officer of every cruiser the right to capture, and send in for adjudication, vessels engaged in the Slave Trade, "not being justly entitled to claim the protection of the flag of any State or nation;" thus constituting such naval officer a judge, with a jurisdiction as extensive as the high seas, to determine not merely the nationality of the vessel, and the object of her voyage, but whether she has violated the laws of her country, and by such violation has placed herself out of its protection, and at the disposition of every other Power.

Almost all maritime nations have been engaged in the Slave Trade, and there are everywhere persons who would yet prosecute it, if not deterred by the danger of detection and punishment. Undoubtedly a right vested in the armed cruisers of one State to stop and examine the merchant-vessels of another, might be so exercised as to contribute towards the suppression of the Slave Trade, as, indeed, its exercise might contribute towards the suppression of other crimes upon the ocean. But this power of armed intervention might also be exerted at the expense of the maritime rights of the world. Such an exercise of force, so liable to be abused, will never meet the concurrence of the United States, whose history abounds with admonitions warning them against its injuries and dangers.

They have no disposition to surrender the police of the ocean to any other Power, and they will never falter in their determination to enforce their own laws in their own vessels, and by their own power, and to oppose the pretension of every other nation to board them by force in time of peace.

Your Lordship, while stating that it is the habit of vessels upon the coast of Africa to hoist the American flag, as a protection against British cruisers, remarks, that "this precaution does not protect the slaver from visit, but it exonerates her

from search." The distinction here taken between the right of visitation and the right of search, between an entry for the purpose of examining into the national character of a vessel and an entry for the purpose of examining into the objects of her voyage, cannot be justly maintained upon any recognized principle of the Law of Nations. To the former, Lord Palmerston, in his correspondence with the American Minister at London, added that "the vessel must be navigated according to law." To permit a foreign officer to board the vessel of another Power, to assume command in her, to call for and examine her papers, to pass judgment upon her character, to decide the broad inquiry whether she is navigated according to law, and to send her in at pleasure for trial, cannot be submitted to by any independent nation without injury and dishonour. The United States deny the right of the cruisers of any other Power whatever, for any purpose whatever, to enter their vessels by force in time of peace. No such right is recognized by the Law of Nations. As Lord Stowell truly said, "I can find no authority that gives the right of interruption to the navigation of States upon the high seas, except that which the right of war gives to belligerents against neutrals. No nation can exercise a right of visitation and search upon the common and unappropriated parts of the ocean, except upon the belligerent claim."

The President of the United States, in his annual Message to Congress in December, 1841, denounced this pretension to detain and examine American vessels, as an interpolation into the Maritime Code of the world, to which the United States would not submit. The years which have passed since this authoritative declaration, marked as they have been by repeated violations of their flag and by repeated remonstrances against these aggressions, while they have added nothing to the strength of the claim, have served but to confirm this Government in their determination to oppose it. No change of name can change the illegal character of the assumption. Search or visit, it is equally an assault upon the independence of nations. Mr. Webster, in a despatch in which he investigated this subject, correctly observed that what in Great Britain and the United States is known as the right of search, is called by continental jurists the right of visit, and then added, "There is no such distinction as the British Government maintains between visit and search." And he further remarked, that the visitation of a vessel, to answer any valuable purpose, must often and necessarily lead, not merely to the sight of papers, perhaps carried with a view to deceive, and produced on demand, but to "a search for other papers," and an inspection of the "log-book, showing the previous course and events of the voyage," to an examination into "the language and general appearance of the crew, into the cargo on board, and the internal fitment and equipment of the vessel. These matters, it is obvious," he continues, "can only be ascertained by rigorous search." And the reasons originally urged by the British Government for the assertion and prosecution of this pretension, furnish, by their very nature, a powerful argument against its validity.

It was contended in its support that, without its exercise, the stipulations of certain Anti-Slave Trade Treaties (to which the United States were not a party) could not be enforced, and "that the present happy concurrence of the States of Christendom in this great object (the suppression of the Slave Trade) not merely justifies, but renders indispensable, the right now claimed and exercised by the British Government." And it was also contended that, without it, "even the laws of England might be set at defiance by her own subjects." And these considerations were formally presented to this Government by the British Government in justification of this attempt to change the Maritime Law of the world. But they are rejected by the United States, who claim inviolability for their vessels, and hold on to that great code whose integrity it is the interest of the strong, as well as the weak, to maintain and defend; and they deny the right of any Power, or of any partial combination of Powers, to interpolate into it any new principle, however convenient this may be found. And they derive neither confidence nor consolation from the assurance given to their Minister in London by an eminent British Statesman, at the head of the Foreign Office, that their vessels are not entered as their vessels, "nor is it as American that such vessels are ever visited." The immunity of their merchant-vessels depends upon the rights of the United States, as one of the independent Powers of the world, and not upon the purposes or motives of the foreign officers by whom it is violated. A merchant-vessel upon the high seas is protected by her national character. He who forcibly enters her, does so upon his own responsibility. Undoubtedly, if a vessel assume a national character to which

she is not entitled, and is sailing under false colours, she cannot be protected by the assumption of a nationality, to which she has no claim. As the identity of a person must be determined by the officer bearing a process for his arrest, and determined at the risk of such officer, so must the national identity of a vessel be determined, at a like hazard to him who, doubting the flag she displays, searches her to ascertain her true character. There, no doubt, may be circumstances which would go far to modify the complaints a nation would have a right to make for such a violation of its sovereignty. If the boarding officer had just grounds for suspicion, and deported himself with propriety in the performance of his task, doing no injury, and peaceably retiring when satisfied of his error, no nation would make such an act the subject of serious reclamation. It is one thing to do a deed avowedly illegal, and excuse it by the attending circumstances: and it is another and quite a different thing to claim a right of action, and the right also of determining when, and how, and to what extent, it shall be exercised. And this is no barren distinction, so far as the interest of this country is involved, but it is closely connected with an object dear to the American people—the freedom of their citizens upon the great highway of the world.

The British Government assume that an armed cruiser of their country, possessing a right, under the Law of Nations, to enter a merchant-vessel of another Power for a specified purpose, has the right also, such entry having been effected, to convert it to another and very different purpose, to the enforcement of the claims of Great Britain, without any avowed limitation of the extent to which this dangerous power may be carried. The consequences of such an authority, if once established, are too obvious to need examination, and would be too dangerous in their practical operation not to unite the other commercial Powers of the world in a firm determination to resist it. Should this claim of visitation become a part of the Law of Nations, it would enable a boarding-officer in all times hereafter, during both peace and war, as the claim has done before in time of war, forcibly to take the citizens of another Power from its own vessels, for the purpose of serving in the British Navy. But the principle of this inquisition and conversion is capable of indefinite extension, and in the progress of events may be used to subject the cargo as well as the crew to the claims and regulations of a foreign Power, thus destroying in effect the free intercourse of the world.

Your Lordship has communicated a list of vessels, said to have been American, and to have been engaged in the Slave Trade. This list I have no means of verifying, but the statement, even if accurate, would serve but to show that the laws of the United States are too often evaded or violated with impunity, as are the laws of every other country. There is one obvious remark, however, applicable to this branch of the investigation, which cannot have escaped your observation. The prosecution of the Slave Trade is now stimulated by extraordinary profits, and additional capital and enterprise are both embarked in its pursuit. No doubt many vessels, constructed in the United States, have been purchased by foreigners and employed in this Traffic. There is a class of American ships famed for their speed, and these are eagerly sought for this purpose. But as was well remarked by Lord Brougham, the people thus disposing of their property are no more answerable for the purposes to which it is devoted, than an English ship-builder who sold vessels constructed in his yard, which were afterwards dispatched to the coast of Africa. Our laws prohibit and provide severe punishment for the fitting out of vessels for the African Slave Trade, and the proper officers are instructed vigilantly to enforce their execution. But they often find it difficult to prove the object of the proposed voyage, and vessels no doubt escape detection, as well as condemnation, and proceed to sea from this absence of proof. And where is the country under Heaven whose laws are not set at nought in the search after gain, and rendered inoperative by the same difficulty of bringing the proof home to the offender? But when such vessels pass beyond the jurisdiction of the United States, and are sold, as they generally are, to foreigners engaged in this business, a very erroneous impression of the true state of things is produced, by formally enumerating them by name and by port as American vessels.

Upon this subject Commodore Conover reported from the African coast, in October last, that in a list of vessels captured by British cruisers, which was prepared by the Lieutenant commanding Her Britannic Majesty's steamer "Antelope," and delivered by Commodore Wise to Commander McBlair, are mentioned several Spanish and Portuguese vessels which "sailed under American colours, proving on

examination, to have been fraudulently assumed." And Commodore Crabbe reported that in most, if not, all the cases in which the American flag is used in this Traffic, the vessels are manned, not by Americans, but by foreigners. And though some of these vessels may belong to American citizens, yet the information received at this department induces the belief, that, by far the greater portion are owned in Cuba, where many are fitted out and prepared for their work, and with a publicity which holds in contempt the illegality, as well as the immorality, of these expeditions.

I have no doubt but that your Lordship is correct in the statement that the American flag has been fraudulently assumed by the vessels of other nations engaged in this Traffic. It is an abuse to which all flags are liable, which is inseparable, indeed, from the freedom of the seas; and, in a debate in the British House of Lords on the 16th of March last, it was said by an eminent member of that body, "that the French flag had been made use of by Spanish slave-dealers to cover their nefarious Traffic."

It is quite probable that a more accurate examination than I have the means of making might show that vessels, English-built and English-owned, have also been employed in pursuing this illegal occupation. And I am justified in this suggestion by a fact which has just come accidentally to my knowledge. It is the prosecution in England of an English vessel which had been thus engaged. Since the receipt of your note, and while looking over the London "Times" of December 11, 1857, I observed the report of the trial of a vessel, the "*Newport*," for participation in this Traffic. It was before the Judicial Committee of the Privy Council, upon an appeal from the Vice-Admiralty Court of St. Helena, which had condemned the vessel. The ultimate issue is not stated, but there is no doubt of the guilt of the parties. Other similar cases might probably be found by even a cursory perusal of the published proceedings of the tribunals having jurisdiction over these subjects. Human cupidity is confined to no one nation, and it is too often gratified without regard to legal or moral duties; certainly without regard to political or geographical boundaries.

Some time since, in conversation, your Lordship remarked that the force which the United States were bound by treaty to employ upon the coast of Africa, had not always been maintained at its full complement. I was not aware of the fact till my attention was thus directed to it, but on making inquiry in the proper quarter, I found the statement was correct, and I found also, as I have already informed you, that the British Government were in the same predicament, their squadron not having always possessed the strength required by the Treaty. I assured you, also, that I could not ascertain the cause of this deficiency, but that the requisite appropriations had been annually made, and that care would be taken to prevent a similar accident hereafter. Your Lordship has thought it proper again to present this subject in a more formal manner, though, after the conversation which passed between us, and the assurances I gave, I did not suppose you attached sufficient importance to these accidental omissions to render a renewal of the subject necessary, more especially as Great Britain required similar forbearance on the part of the United States. Your Lordship has been unable to ascertain the cause of this failure on the part of your Government, but you conjecture that it may have been owing to the demands of the Crimean war, and to a change in the class of ships employed. Certainly, the instances of accidental non-compliance by the United States with the Treaty stipulations, some of which had occurred years since, and had passed without complaint, might be regarded with equal charity. Both parties have failed literally to enforce the Treaty, and the work of supererogation, in maintaining during some years a greater force than is required by it, and which is assumed by your Lordship as an equivalent, and may be so assumed by the United States, does not repel the charge of a non-compliance during other years when the force was less than the Treaty required. But I repeat the assurance already given that the requisitions of the Treaty will be faithfully observed by the United States so long as it may continue in force.

But while renewing this assurance, the President trusts that such instructions will be issued by your Government to the British naval officers employed upon this service, as will prevent all interference with American merchant-vessels, and thus prevent the recurrence of those causes of complaint which, during almost twenty years, have been often the subject of remonstrance upon the part of this Government. The United States have a legitimate trade with the Western Coast of Africa, which is already important and is annually increasing in value. The articles

exported from this country are exchanged for palm oil, ivory, hides, dye-woods, and other productions of that extensive region. Vessels lawfully engaged in this commerce, and approaching the suspected latitudes, become themselves suspected, and will be liable to vexatious interruptions, if this claim forcibly to board and examine them is once established. The evil has already been felt, and if the practice is not discontinued, it will go on increasing, not only in derogation of national rights, but to the serious injury, perhaps to the destruction, of this branch of American commerce. The very nature of these interruptions almost necessarily leads to abuses. The boarding officer is supported by a competent force while taking the command of a foreign merchant-vessel. He pursues his examination at pleasure, detaining the vessel if he thinks proper, and sending her in for trial if not satisfied. It is not necessary to pursue this recapitulation, as the circumstances attending these naval inquisitions are well known, and have been rendered familiar to the people of the United States by grave occurrences in their history. Such vexatious interruptions would go far towards the annihilation of the growing commerce between the United States and Africa, leaving it to be pursued by the more fortunate adventurers of other nations not exposed to similar obstructions. And the interruptions may be accompanied by circumstances little compatible with the continuance of those friendly feelings which now happily unite our respective countries. An occurrence of this nature has just taken place, if the report from Savannah, now going the round of the papers is correct, that an American vessel, the "*N. B. Borden*," engaged in a lawful trade, was fired at by the British steam-vessel of war, the "*Styx*," on the high seas, off the coast of Cuba, and forcibly detained and examined. The report may be incorrect, but I have written for the necessary information, and if I find, when received, that it corroborates the published statement, I will communicate the result to your Lordship, with such representations as the circumstances may call for. But it is obvious that a serious collision may occur at any time when a British armed vessel meets an American merchantman, so long as this pretension is exercised.

Your Lordship disavows, on the part of your Government, the right of British cruisers to detain an American vessel, even if found engaged in the Slave Trade. In view of this disavowal, I am at a loss to comprehend why an American vessel, when detained upon the high seas, should destroy the evidences of her nationality, and suffer herself to be captured, when, by maintaining her true character, she would be beyond the control of any cruiser, except one of her own nation. A despatch from the commanding officer of the American squadron upon the coast of Africa, Commodore Conover, to the Secretary of the Navy, dated October 19, 1857, throws light upon this subject, and shows the danger of abuse which surrounds this whole matter. He states that American vessels employed in the Slave Trade have been encouraged by the officers of British cruisers to throw their papers overboard, in order to avoid the punishment of death, and have been thus taken without any evidence of nationality. The reason assigned for this procedure is said to be, that the punishment of this offence, by the laws of the United States, being death, persons found committing it, under the American flag, if they cannot escape, prefer to be captured by a British cruiser, with the chance of impunity, or, at any rate, of a less penalty than capital punishment. The crew is landed upon the nearest part of the coast, while the vessel is sent to an Admiralty Court for condemnation, and the proceeds, or a considerable portion of them, distributed as prize money, and an allowance made for each of the captured slaves. And such slaves, it is understood, are transported under prescribed regulations, defining their condition, to the British tropical possessions in America. How far these regulations may afford adequate protection to the imported labourers I have not the means of judging; but I observe it was stated by high authority in the British House of Lords on the 16th of March last, and not contradicted, that a law had been passed in the Island of Jamaica, called a vagrant law, the real object of which was to reduce the free negroes in the island to slavery.

Commodore Conover states that, till he ascertained the existence of this practice, he could not account for the numerous cases of vessels, "without flag or papers," taken by British cruisers. And I observe, in the list of vessels reported by your Lordship to have been captured, that some of them are stated to have had no papers. The papers were, no doubt, in some instances, disposed of in the way and with the view described by Commodore Conover. The following extract from his report will explain as well the abuses as the dangers of this armed interference by

foreign cruizers with American vessels; and it shows, also, that, sometimes, the condemnation of the vessel is a nearer object than the punishment of the crew.

After reporting the capture of the "*Bremen*," bearing the American flag, Commodore Conover says, that "this seizure appears to me only an instance of the method usually adopted by Her Britannic Majesty's cruizers on this coast to secure as prizes American slavers, and may serve to explain what before seemed very strange, that so many vessels should be reported by the British Commanders as having been captured without flag or papers."

Commodore Conover also inclosed the report of Commander Mc Blair, commanding the United States' sloop of war the "*Dale*," who had sent two of his officers, Lieutenants Pelot and Davidson, to Commodore Wise, in command of the "*Vesuvius*," by which vessel the "*Bremen*" had been captured, in order to ascertain the true circumstances of the case. Commander Mc Blair reported that Commodore Wise said to Lieutenant Pelot, that when the "*Vesuvius*" neared the "*Bremen*," this latter vessel "hoisted American colours, and hove-to. Commodore Wise boarded her in person; and having reason to suppose that the vessel was engaged in the Slave Trade, informed her commander, who appeared to be a Portuguese, that it was his intention to take the vessel, and that he did not wish to see her papers; at the same time giving him his choice whether to be taken under the American flag, or otherwise. The captain made some unintelligible expression about being taken as a pirate, and the mate hauled down the colours immediately. The papers were then thrown overboard, and the vessel was seized as a prize, 'without colours or papers.'

"The officers and crew of the vessel, with the exception of the cook, were landed on the nearest part of the coast, and she was sent to Sierra Leone."

Commander Mc Blair also reported that Lieutenant Davidson asked Commodore Wise whether, in the event of his meeting with an American slaver, under American colours, and bearing genuine papers (which, of course, she would have obtained when she cleared for other purposes than slaving), he would use means to induce the captain to throw his colours and papers overboard. He replied, "Well, I might stretch a point, and tell the captain the '*Dale*' was just near at hand."

Commodore Conover immediately addressed a letter to Rear-Admiral Sir F. W. Grey, the British commanding officer upon the station, protesting against this action of Commodore Wise, as an interference with the rights of Americans to take and bring to merited punishment those who, while they bear the flag of the United States, offend against its laws; and protesting against it also for other just reasons, which he urges, growing out of this assumption of power. I do not doubt but that this subject will engage the attention of your Government with a view to the correction of the evil.

I have already informed your Lordship that I have not the means of verifying the lists of the vessels which you have transmitted, or of ascertaining whether the rights of the United States may have been violated by the capture or condemnation of any of them. But the circumstances reported in your letter of January 17, 1858, respecting the vessel the "*Louis McLane*," are sufficiently grave to call for an investigation. You state that this vessel, sailing under the American flag, was captured by Her Britannic Majesty's cruizer the "*Alecto*," and that her papers were "of a character so fraudulent or imperfect as to constitute no evidence of American nationality."

It is not shown what was the nature of the papers, nor in what the fraud or imperfection consisted. I am at a loss, therefore, to understand the ground of justification for the capture of this vessel, more especially as she sailed with regular papers, furnished by the Collector of New Orleans, and I can perceive no motive the captain could have had to replace these by fraudulent or imperfect papers, while still claiming American nationality. When I received your Lordship's letter calling my attention to this case, I communicated a copy to the Collector, requesting from him the necessary explanation. He informed me in answer, that having reason to suspect the illegal destination of the "*Louis McLane*," he caused her to be watched; but not being able to procure the necessary proof for her condemnation, he granted her a regular clearance; and, at the same time, agreeably to previous arrangements, he telegraphed to the captain of the revenue cutter stationed at the mouth of the Mississippi, instructing him to overhaul the "*Louis McLane*," and to examine her thoroughly, and, to adopt the words of the report, "if he found evidence to justify the suspicions I had entertained, to take charge of the vessel, and bring her back to the city."

The result was, the arrest of all the persons on board, the return of the vessel, the discharge and careful examination of her cargo, the examination of the vessel and her equipments by several experienced shipmasters, some of whom having been on the coast of Africa were competent judges, and the institution of legal proceedings against both the vessel and the parties arrested.

In these proceedings every effort was made by the most careful and constant attention to the subject, to convict the parties accused, and to condemn the vessel. The accused were defended by able counsel, and released in the preliminary examination, and in the action against the vessel; although to my mind the evidence was conclusive, the Government failed to obtain a verdict. This case was, however, so clear, that an appeal was taken from the United States' District to the United States' Circuit Court, while the vessel, released on bonds, proceeded to sea. I append a copy of the letter, not merely as an act of justice to the Collector, but also because it shows the zeal and efforts which are used to enforce the laws upon this subject, and the difficulties the officers have to encounter. The Collector, as your Lordship will observe, desires copies of the papers to which he refers, as they may be useful in the further judicial proceedings at New Orleans, touching the "*Louis McLane*."

If in your Lordship's power, I should feel obliged if you would have the copies forwarded to this Department, as it is important that the circumstances of this capture should be fully known to the Government, that such measures may be taken, with relation to it, as the facts, when disclosed, may call for. The papers will ultimately be forwarded to the Collector.

In conclusion, I am instructed by the President to inform your Lordship, that while he is determined to execute the Treaty of 1842 with fidelity and efficiency, he is not prepared, under existing circumstances, to enter into any new stipulations on the subject of the African Slave Trade.

I have, &c.
(Signed) LEW. CASS.

Inclosure 2 in No. 1.

Mr. Hatch to General Cass.

*Custom-House, New Orleans,
Collector's Office, March 18, 1858.*

Sir,

I HAVE the honour to acknowledge the receipt of yours of the 8th instant, with the inclosed communication from Lord Napier, Her Britannic Majesty's Minister in this country, in reference to the recent revival of the African Slave Trade, under the fraudulent assumption of the United States' flag, and referring to the departure of the "*Charles*," of Baltimore, from this port, with which censure is attached to the customs authorities, "for permitting this vessel to clear with a manifest that might justly have excited their suspicions."

In cheerfully acceding to your request for any information on the subject, I have the honour to state that, by a reference to the files and records of this office, I find that the "*Charles*" cleared from this port on the 28th of March, 1857, three days before I assumed the duties of the office of Collector.

In examining these documents, I find reference is made to the capture on the coast of the schooner "*Louis Mc Lane*," and as this vessel cleared from this port during my administration, I deem it proper to state the facts connected with this case, which are as follows:—

In the month of April 1857, the schooner "*Louis Mc Lane*" changed owners in this city, and obtained a register from this office. Some circumstances connected with the change of ownership, and the loading and arrangements of the vessel, excited my suspicions that she was designed for the African Slave Trade; that, in order to obtain evidence sufficiently positive for legal action, I caused her to be closely watched; but though the information thus obtained was convincing to me, it was not of a character that would be available in a legal prosecution. With the desire, therefore, to accumulate evidence and to confirm my suspicions, by enabling the vessel to complete her equipments, I deemed it advisable to grant her a clearance, which I did on the 1st of May, 1857. And having previously communicated with the commander of the revenue cutter, stationed at the mouth of the river, and prepared him for the duty to be discharged, I, immediately on granting the

clearance, telegraphed to the captain of the cutter to overhaul the "*Louis McLane*," on her reaching the mouth of the Mississippi river, to examine her thoroughly, and if he found evidence to justify the suspicions I had entertained, to take charge of the vessel and bring her to the city.

The result was the arrest of all the persons on board, the return of the vessel, the discharge and careful examination of her cargo, the examination of the vessel and her equipments by several experienced persons, some of whom having been on the coast of Africa, were competent judges, and the institution of legal proceedings against both the vessel and the parties arrested.

In these proceedings every effort was made, by the most careful and constant attention to the subject, to convict the parties accused, and to condemn the vessel.

The accused were defended by able Counsel, and released on the preliminary examination; and in the action against the vessel, although to my mind the evidence was conclusive, the Government failed to obtain a verdict.

This case was, however, so clear, that an appeal was taken from the United States' District to the United States' Circuit Court, while the vessel, released on bonds, proceeded to sea.

As the appeal case is yet undecided, and I deem it exceedingly important that every possible effort should be made to obtain a verdict, I would respectfully solicit the assistance of your Department in obtaining from Her Britannic Majesty's Minister, at as early a date as possible, an authentic copy of the proceedings of the Court which condemned the "*McLane*" (if she has been condemned), or any facts that may be used as evidence in the prosecution of this case.

Although in our community there are many whose sympathies are elicited in favour of the revival of the African Slave Trade, and others who are reluctant to punish offenders on suspicions, be they ever so strong and well-sustained, for which reasons it is exceedingly difficult to obtain a verdict before a jury; yet, the charge of laxity, or even lukewarmness on this subject, among the officials of the Government, is without reason or foundation, and I am satisfied that my official colleagues as well as myself have been active, vigilant, and energetic, in the endeavour not only to discover attempts at violations of our laws prohibiting the Slave Trade, but also zealous in their efforts to obtain evidence to insure conviction and condemnation, in cases where arrests have been made, or proceedings instituted.

It shall continue to be the special care of this Department to scrutinize the manifests of all vessels to which the slightest suspicion may attach of their being connected with this Traffic, and adopt the most prompt measures to preserve the enactments of Congress on this subject from violation.

Any information that I may obtain relating to this subject, shall be most cheerfully placed at the disposal of the Department of State.

I am, &c.

(Signed) F. H. HATCH, *Collector*.

Inclosure 3 in No. 1.

Lord Napier to General Cass.

Sir,

Washington, April 16, 1858.

I HAVE the honour to acknowledge the receipt of your note of the 10th instant, relative to the prosecution of the African Slave Trade under the fraudulent assumption of the American flag, and respecting the course adopted by Her Majesty's Government and the British cruizers in the repression of this nefarious Traffic. Your remarks will be transmitted for the consideration of Her Majesty's Government.

With reference to the case of the "*Louis Mc Lane*," to which you have particularly alluded, I learn from the correspondence forwarded to Her Majesty's Legation that this vessel was detained, by Her Majesty's ship "*Alecto*," on the ground that her papers were imperfect, or fraudulent, and under the conviction that she was not justly entitled to the protection of the flag which she had adopted, being deficient in various particulars requisite to confer a character of nationality.

The suspicions of the Commander of the "*Alecto*" were immediately justified by the conduct of the master of the slaver. He threw his papers and colours overboard, and surrendered himself as a lawful prize, making declaration that he

was engaged in the Slave Trade, as appears by the document bearing his signature, of which copy is inclosed herewith. The name of the vessel was verbally conveyed to Commander Hunt previous to her detention. She is stated to have been a schooner of 176 tons burthen, American measurement. It may not be easy now to obtain an accurate report of the defect in her papers, as the latter have perished by the act of the master; but I will lose no time in making a communication of your wishes on this subject to Her Majesty's Government, in order that the proceedings of the Federal authorities at New Orleans may be conducted with all the information which we are enabled to supply.

I have, &c.
(Signed) NAPIER.

No. 2.

Mr. Dallas to the Earl of Malmesbury.—(Received June 1.)

My Lord.

*Legation of the United States,
London, May 31, 1858.*

REFERRING to our conversation of this morning, I have now the honour to comply with your Lordship's request, by inclosing a copy of the despatch received by me on Friday last from the Secretary of State at Washington, to which despatch were annexed the Consular report and affidavits, whereof copies were left with your Lordship.

I beg, &c.
(Signed) G. M. DALLAS.

Inclosure 1 in No. 2.

General Cass to Mr. Dallas.

Sir,

Department of State, Washington, May 12, 1858.

THE accompanying papers, copies of the originals, which have been just received, will make known to you another outrage committed against the rights of the United States by a British armed vessel, which calls for the immediate attention of the British Government. I am persuaded that if the occurrences took place as they are stated, the conduct of the British officer will be disavowed and condemned.

I beg you would communicate to Lord Malmesbury the earnest desire of the President that this practice, which seems to become more prevalent, of detaining and searching American vessels, should be discontinued, and that the most peremptory orders for that purpose be given and enforced. Such a measure is called for by important considerations, which will readily occur to you. While this Government is determined to use all proper exertions for the suppression of the Slave Trade, it is not less desirous that the just immunity of the vessels of the United States upon the ocean should be preserved. Whatever may have been the true objects of the voyage of the "Cortez," if she had papers showing her American character, she was subject neither to search nor capture by a British cruiser. I do not doubt but the facts reported will be fully investigated by order of the British Government, and proper measures taken to prevent the recurrence of a similar act hereafter.

I call your attention also to the circumstances reported by our Consul-General at Havana, showing the existence of a kind of police system, by which American vessels in that port are watched and interfered with, and have to request that you would bring the matter to the attention of the Earl of Malmesbury, with a view to the correction of the evil.

I am, &c.
(Signed) LEW. CASS.

Inclosure 2 in No. 2.

*Mr. Blythe to Mr. Appleton.**Consulate-General of the United States,
Havana, April 29, 1858.*

Sir,

I HAVE received definite information that the schooner "Cortez," of New York, James M. Durand, master, was captured by the British screw gun-boat "Forward," on or about the 15th instant, about half way between Havana and Matanzas, at a distance of about thirty-five miles from the Cuban coast. Before proceeding to give such facts in relation to her seizure as have come to my knowledge, I will premise by stating that for some time past a number of British gun-boats, and other larger vessels of war of that nation, have been very active in cruising for slavers, both on the north and south side of this island.

Many complaints have been made to this office by American masters, that these British men-of-war have exercised about the vessels under their command in this harbour, a system of espionage, exceedingly annoying to them in their business, and, from the manner in which it has been done, insulting to their national feeling. Whilst two of these British war-ships were in this port (I learn from American masters then taking on freight), they were in the daily habit of sending their boats around the harbour, and stationing them near such vessels as were lading; that they would carefully note every article taken on board, and in some instances were so pertinacious in their surveillance as to put themselves in the way of the lighters bringing cargo.

The American brig "A. A. Chapman," engaged as a regular packet between this port and New Orleans, was thus annoyed on her last visit here. Her commander complained at this office on the eve of his departure, and expressed apprehension that he would be followed out to sea and boarded: a rumour was in circulation that she was boarded after leaving the port. I had no means of ascertaining the truth of the rumour, but presumed, if it was true, the fact was reported at the Custom-house in New Orleans.

A few days after the "Chapman" left, the "Brownsville," Captain Simpson, engaged in the same trade, presented a similar complaint, alleging that a British man-of-war's boat lay constantly by him, watching everything that went on board, and interfering with his launches.

I present these facts, as they are the subject of much conversation in shipping, and have caused great indignation among American citizens here.

The "Cortez" arrived here on the 20th of March from New York, under the command of her sole owner, Adam A. Smalley. On the 27th he appointed his mate, James M. Durand, master of the schooner, and executed at this office, in favour of said Durand, a power of attorney, authorizing him to sell the schooner if he could, or charter her. She cleared at this office on the 13th instant, for Annobon, with an assorted cargo, and sailed on the next morning. The parties interested in the cargo have since furnished me the charter-party and bill of lading, which I herewith transmit to the Department.

Learning that several of the crew and passengers had arrived here, and desired to make their complaint at this office, I caused them to come before me that I might receive their statement of the facts under oath. I transmit to the Department the testimony of the mate, three of the seamen, and three of the passengers. I learn that the passengers, who say a large amount of money was taken from them, purpose presenting a demand for its restitution, and for damages, through this office. When they present themselves for that purpose I will, of course, receive their protest, and forward it to the Department.

Captain Durand's conduct, as disclosed by the testimony, seems to have been very strange. It seems to be the fixed opinion of the mate that he sold the vessel for a consideration. What were the contents of the paper which the mate and men say was signed by the captain, I have not been able to ascertain. If the vessel was bound on a slave-voyage, then the captain should certainly be punished for prostituting the flag of our country to such a purpose; if she was not, and her commander so represented her for a consideration, then he is equally guilty, and should certainly be punished.

Since the occurrence, I have conversed with a respectable and intelligent American merchant of Matanzas, Mr. Roger Horner, who met the commander of the gun-boat "Forward" in that city, and assured me that that officer had stated to him that

the "Cortez" had neither papers nor flag; this statement, of course, is untrue. The mate and men all state that the flag was exhibited, and the papers produced, examined, and copies of them taken. If these men have perjured themselves, and no papers or flag were exhibited, then it would show collusion between the commander of the "Cortez" and the person seizing her, as the "Cortez" certainly took from this office regular papers. I learn from the same gentleman, Mr. Horner, that the master of the "Cortez" has sailed from Matanzas to the city of New York. In any view of the conduct of this man, the propriety of an investigation is manifest.

Since I commenced this communication, Captain Saml. Tebbenham, master of the barque "Glenburn," of Richmond, has arrived in port, and complains that on the 15th instant, whilst on his passage from Antwerp for this port, he was stopped by Her Britannic Majesty's steamer "Basilisk," and boarded by one of her officers, accompanied by a detachment of men; the officer asked him the particulars relating to his ship, and stated to him that he had orders from the Admiral at Jamaica to board every vessel found in the neighbourhood of the coast of Cuba. I will transmit by next mail his sworn statement of the facts.

I content myself, and deem that therein I have done my whole duty, in presenting a simple statement of such facts as have come to my office. I make no suggestions concerning the right of foreign men-of-war to visit or detain, at sea, vessels bearing the flag of the United States.

Under any circumstances I would doubt the propriety of discussing such principles in a communication to the Department. Under existing circumstances, I conceive that it would not only be supererogatory, but presumptive on my part, as it is a subject with which the Chief of the Department is believed to be more conversant than any living statesman.

I have, &c.
(Signed) A. K. BLYTHE, *Consul-General.*

Inclosure 3 in No. 2.

Depositions, &c.

*Consulate-General of the United States of America,
Island of Cuba.*

ON the day of the date hereof, before me, Andrew K. Blythe, Consul-General of the United States of America for the Island of Cuba, residing at Havana, personally appeared Don Antonio Flores, Antonio Perez, and Miguel Soler, all Spanish subjects, who stated that they were passengers on board the American schooner "Cortez" from the port of Havana, and having been compelled to return here, they wished to give their deposition under oath, and requested me to receive their depositions. The said appearers being therefore sworn according to law, declared and deposed as follows:—Don Antonio Flores saith, that he took passage with a regular passport from the Superior Government of Cuba, in the American schooner "Cortez," from Havana to the Spanish Island of Annobon in the African sea; that he sailed in said vessel from Havana, and when off Jaruco, a British screw gun-boat called the "Forward" overhauled the vessel; that he was conducted on board the British vessel, and three days after the British vessel anchored off Cayo Piedra, near Cardenas, where he was deprived of his best clothes, his money (2,000 dollars), his passport, and other effects, by the people of the British gun-boat, and then made to land upon Cayo Piedra; that this was done in the presence of the pilots of the port of Cardenas, who afterwards conducted him to Cardenas; he was put on shore on last Sunday the 18th instant.

(Signed) ANTONIO FLORES.

Don Antonio Perez saith, that he took passage in the American schooner "Cortez" with a passport signed by the Governor-General of Cuba, countersigned by the Political Secretary, bound to Annobon; that the said schooner was overhauled off Jaruco by the English gun-boat "Forward" on the 16th instant; that himself and other passengers were conducted on board the gun-boat, and three days after landed upon Key Piedra about four leagues from Cardenas; that there himself

and others were robbed of almost everything they possessed by the people of the gun-boat—that he was robbed of the best portion of his clothes, his money (6,000 dollars), his passport, and other property; and the only thing that they returned to the passengers was their watches: that all this took place in the presence of many persons; and himself and the other passengers, and the mate of the schooner, were put naked and searched in the presence of a large number of persons; that he, as well as the others, were treated with the greatest indignity; and the commander of the gun-boat was dead drunk at the time—the British officers behaved more like Vandals than civilized men; that finding himself landed upon the key, he accepted the kindly offer of the Cardenas pilots, who took him and the other passengers to Cardenas, from whence they came to Havana.

(Signed) ANTONIO ^{his} ~~X~~ PEREZ.
mark.

Don Miguel Soler saith,—Myself and other passengers left this port of Havana with regular passports for Annobon. When off Jaruco the 16th instant, the American schooner “Cortez,” upon which we were, was visited, searched, and captured by the British gun-boat “Forward.” Myself and the others were made to go on board the gun-boat, where we were obliged to take off our garments and shoes, and searched, and otherwise treated with very great indignity. On the 19th, off Cayo Piedra, everything of value that we possessed, excepting the worst portion of our clothes, and our watches, were taken from us. I was robbed, amongst other things, of 422 Spanish doubloons, by the people of the “Forward,” and then set on shore. The captain of the “Forward” was so drunk at the time that he could scarcely walk the deck of his vessel. The pilots of the port of Cardenas who witnessed the whole transaction above recited, gave him a passage to Cardenas, from whence he came to Havana.

(Signed) MIGUEL SOLER.

In testimony whereof I hereunto set my hand and affix my official seal, at Havana, this 24th day of April, 1858.

(Signed) A. K. BLYTHE,
By Thomas Savage,
Deputy Consul-General and Interpreter.

Shipped, in good order and well-conditioned, by Francisco Garcia, on board the American schooner called the “Cortez,” whereof is master for this present voyage, S. Durand, now lying in the port of Havana, and bound for Annobon, to say:—

- 70 Bags of rice.
- 20 Barrels of beans.
- 40 Barrels of bread.
- 10 Kegs of lard.
- 20 Jars of olive oil.
- 8 Boxes of cod fish.
- 1 Iron kitchen.
- 3,000 Feet of pitch pine.
- 5 Barrels of wine.
- 40 Pipes of white rum in halves and quarters.
- 60 Empty hogsheads.

Being marked and numbered as in the margin, and to be delivered in the like good order and condition at the aforesaid port of Annobon (the dangers of the seas only excepted) unto Mr. José de Silva, or to his assigns, he or they paying freight for the said goods 2,000 dollars, with 5½ primage and average accustomed.

In witness whereof, the master or purser of said vessel hath affirmed to three bills of lading, all of this tenour and date, one of which being accomplished, the others to stand void.

Dated Havana, the 13th day of April, 1858.

(Signed) JAMES M. DURAND.

Charter-party.

It is this day mutually understood and agreed upon, between James M. Durand in behalf of the owners of the American schooner "Cortez," of 176 tons, whereof James M. Durand is master, now lying in the port of Havana, on the first part, and Francisco Garcia, merchant, on the second part, as follows:—That the said vessel being tight, staunch, strong, and in every respect fitted for the intended voyage, Captain Durand shall receive on board said schooner a full cargo, to consist of such goods or merchandise as the charterer may see proper to send in her (legal goods or merchandise is understood), which shall not exceed what she can reasonably stow and carry, over and above her tackle, apparel, provisions, and room sufficient for the accommodation of the officers and crew, and which cargo the said parties of the second part hereby agree to furnish at Havana.

The said vessel being so laden, Captain Durand shall, with all possible despatch, make sail for the port of Annobon for orders, and on his arrival at the port of discharge, make a true and faithful delivery of the cargo according to custom and the bills of lading, to the charterer's agent.

In consideration whereof, freight shall be paid on right delivery of the cargo at the rate of 4,000 dollars cash at Havana before the departure of the vessel, and 3,000 dollars on her return voyage to a port in the Island of Cuba.

The lay-days shall be as follows:—Fifteen running-days, after the expiration of which time demurrage shall be paid, at the rate of 25 dollars for each and every day as it may become due.

The cargo shall be taken in and discharged according to custom of the respective ports of loading and discharging, at the charterer's expense. The vessel shall be consigned at Annobon to the order of the said merchants, paying no commissions.

It is further understood and agreed upon, that on arrival at Annobon, and after delivery of cargo, Captain Durand will receive on board such cargo of goods as the charterer's agents may give him, and, should they see proper to load the vessel with copper-ore, oils, hides, &c., and send her to a port in the United States, they may do so by paying the same sum stipulated for a port in Cuba.

And for the due performance of the several Articles of this Agreement, the respective parties do hereby bind themselves, their heirs, executors, administrators, and assigns, in the penal sum of 4,000 dollars—restraint of rulers, the acts of God, pirates, enemies, and all and every of the dangers of the seas, rivers, and navigation, of whatever nature and kind, always excepted.

In testimony whereof the respective parties have hereunto set their hands, in Havana, this 29th day of March, in the year 1858.

(Signed)

JAMES M. DURAND.
FRANCIS GARCIA.

Received, Havana, April 13, 1858, from Don Francisco Garcia, four thousand dollars in payment for my outward voyage, as per charter-party.

\$4,000.

(Signed)

JAMES M. DURAND.

*Consulate-General of the United States of America,
Island of Cuba.*

Information having reached this office that the American schooner "Cortez," of New York, James Durand, master, which sailed from this port on the 14th instant, bound to Annobon, was captured on the 15th instant by the screw gun-boat "Forward" (British), off the Island of Cuba; and learning that her first officer and a portion of her crew had reached Havana, I have caused such of them as could be found to come before me, who being sworn on the Holy Evangelists of Almighty God to speak the truth, the whole truth, and nothing but the truth, depose and say as follows:—

William Archbold, being first examined, saith—

"I am a citizen of the United States, having been naturalized in Philadelphia. I was chief mate of the schooner 'Cortez,' of New York, on the voyage she undertook from Havana, whence she sailed on the 14th of the present month. I was regularly shipped at Havana; and my understanding on shipping was, that the vessel was going on a lawful trading voyage to the coast of Africa. We left Havana in tow of a steam-boat on the morning of the 14th. The crew consisted

of the captain, myself, the cook, and four men before the mast: there were eight passengers on board. On the day following, at half-past 9 A.M., a British man-of-war, that had been in sight of us that morning, fired a gun, when we immediately hove-to. She had her ensign up, and we set our own colours. We laid to until the man-of-war, which proved to be the British screw gun-boat "Forward," came to us. We were about halfway from Havana to Matanzas, and distant some thirty-five miles from the Cuban coast; the top of the Pan of Matanzas was visible. The captain of the man-of-war boarded us, and demanded of Captain Durand to see his papers. Captain Durand presented his papers; our colours were up at the time. He examined the papers, and found some fault with them; I do not know what he objected to, but it was mostly in relation to the passengers. The British officer took copies of all the schooner's papers. Our captain at the time did not know that the British officer was the Commander of the gun-boat, and said to him, 'You now have copies of my papers; take them to your Captain, and he will find them correct,' or words to this effect. The captain of the man-of-war returned then to his vessel, and remained there for a short time. When he returned he informed Captain Durand that the schooner was a prize, as she was bound on the Slave Trade. He stated that he had received information before we left the harbour of Havana, and that he knew us as soon as he saw us. Captain Durand told me to haul the colours down. I obeyed his orders. I then asked, 'How do we stand now, when our colours are down?' The Captain of the man-of-war told me he would take us as pirates. I then requested Captain Durand to allow me to set our colours again, for I had shipped upon a lawful voyage, and wished to be taken as such, and I did not consider any foreign man-of-war in the universe had any claim to us. With Captain Durand's permission I again set the colours. Durand then called me down in the cabin to ask my advice. I advised him not to haul down his colours, as his papers were in order, and that the object of the British officer was to frighten him to do things that were not right. I said also that if the British cruizer took charge of our vessel, let the British officers haul down the colours themselves. Captain Durand then made some remarks about the consequences of being taken with American colours, such as being taken to Baton Rouge. He said his papers were all false, and that there was not a correct account of the passengers. I told him to take no notice, for if a British cruizer can take an American vessel for not having a correct account of the passengers, then almost every passenger carried could be taken. He also advised me to let things go on, that we would be taken to Jamaica, and as we had received our money, we need not care for the Spaniards. I refused to accede to his request, and demanded of the captain of the man-of-war to take me to Havana. He answered, No, for if I take you to Havana, I can do nothing with you there. He then took Captain Durand down into the schooner's cabin, and remained there for some time. I was not present during their interview in the cabin. Captain Durand came upon deck, and ordered me to haul down the colours, which I did. Captain Durand ordered me to lay there until he came back, and then, with the British captain, he proceeded on board the man-of-war in her boat. Captain Durand remained absent some twenty minutes. While he was away I told one of the crew to tell the passengers to look out for themselves, for I thought the captain was going to sell the vessel. When Captain Durand returned on board with the British captain I was aft, by the wheel. He told me, I am no longer in charge; I have no longer any control over you; this man is your master; you must obey him, pointing to a master, who, with six man-of-war sailors, had been left on board. I said that I had been lawfully shipped at the American Consulate; that the ship, so far as I was aware, had been lawfully cleared, and was bound on a lawful voyage, and that I would obey no man from a British cruizer, or of any other foreign nation; that I shipped under the American flag, and would go under no other. The British master then said, If you will not work, I will send you on board the man-of-war. I told him if he took me out of the schooner it would be against my will. Captain Durand remarked, "If you go with those damned Spaniards they'll put a knife in you." The passengers had previously been taken out and conveyed to the man-of-war, and, as I refused to work, I was also sent on board the gun-boat, where I was put in irons. When I was in irons the captain of the man-of-war offered me the sum of 500 dollars, provided I would sign a paper certifying that I was going upon a slaving voyage to the coast of Africa, and he would release me from the irons, and land me wherever I liked; and said that if I would not do it, that as I was an Englishman, as Captain Durand had told him, he would keep me on board the gun-

boat, and I was liable to be hung, "for I will not let you go on shore, for if you go to Havana you will make plenty of trouble for me." I had some other words with him. He threatened "to heave four dozen into me," if I would not sign the paper. I refused to sign it, and demanded that he should land me where I could get to my Consul; he made me the same offer a second time; he even put one of his engineers to get me drunk, and furnished liquor of all kinds, but I was aware of his object, and took care of myself. When Captain Durand came on board the man-of-war he was much intoxicated, and told the English captain to secure me, saying I was a great ruffian, and would knife every man on board. The English officer and myself again had a quarrel, because he accused me of having money in my pocket which I had received as a bonus for engaging upon an unlawful voyage. I told him he was a liar; that I had received one month's advance, and that I had been paid off in Havana from the vessel in which I had come with 280 dollars. The British officers took away from me seven Spanish doubloons, and almost everything I had. I was robbed by the British sailors; so were the passengers. The British captain was so drunk that he could hardly stand. In the meantime we had got to Cayo Piedra, off Cardenas, where I was sent on board a Spanish steam-boat bound to Havana. I left Captain Durand on board the gun-boat; the passengers had been put on board a pilot-boat; the British captain first gave me one doubloon, and, upon my remonstrating with him, he gave me another. He was drunk, very drunk. One pair of shoes was returned me also. Almost everything else was taken from me. When the British captain first came on board the "Cortez" he was not drunk, but he soon after became intoxicated, and continued so until I left him. Captain Durand was kept in the same condition; the rest of the officers and crew of the "Forward," with one or two exceptions, were also drunk, and behaved more like pirates and thieves than men belonging to a war-vessel. I arrived in Havana the 23rd; two of our crew came with me in the steam-boat; another was sent with the passengers on board the pilot-boat; the steward and one man remained on the "Cortez." I do not know what amount of money was taken from the passengers, but it was a large sum. The passengers and myself were made to strip almost naked on the man-of-war, and our persons were carefully searched; four of the passengers were put in irons, the rest were not, and we got very little food, and that not of the best kind.

(Signed)

WM. ARCHBOLD.

William Green, being next examined, saith:—

I shipped in New York as seaman on board the schooner "Cortez," of that port; from thence we came to Havana, where we remained several days, and again sailed from Havana, on the 14th instant. I am a Swede by birth; I was aware when leaving this port, that we were bound to Africa, and understood and believed we were going on a lawful trading voyage; the second day out, an English man-of-war, the gun-boat "Forward," fired a gun, hoisted her ensign, and made us heave-to; we hoisted our colours, and hove-to, when a boat from the man-of-war, with her commanding officer, boarded us. After a while the captain of the "Cortez" had the flag hauled down, gave up his vessel, and left us in charge of the British officer; the mate said that he would not be taken as a pirate, and hoisted again the American colours; subsequently our captain came to us, and asked us, what we would prefer? to go in the vessel to Port Royal, or be transferred to a steam-boat, and landed in Havana or Cardenas, or taken to Key West, at which last place, if we were taken there, we should be put in the chain gang for three years. He said if we would go to Jamaica, we could stay by the vessel; so we staid by her, until some few days after she and the gun-boat came to an anchor near the light-house off Cayo Piedra, outside the Bay of Cardenas; myself and the rest of the crew were taken on board the man-of-war. The next day the steward and another man were sent back to the schooner; the passengers, and one of the crew that shipped in Havana, had been sent ashore before; the mate (Mr. Archbold), myself, and the seaman Manuel Florente, remained on the man-of-war about three days. The captain of the man-of-war gave one doubloon to each of the Spaniards, also to each of the seamen, Florente and Antonio Francesco; to me he gave nothing, and sent us on board a steam-boat that conveyed us to Havana.

I forgot to state before, that shortly after the vessel had been captured by the man-of-war, our captain went on board the latter vessel; he was sober when he left, and when he came back, he was very drunk. The seaman Antonio Francisco and

Mr. Archbold were kept in irons in the man-of-war several days. The captain of the man-of-war was drunk pretty much the whole time.

(Signed

WILLIAM GREEN.

Antonio Francisco, being next examined, saith:—

I shipped in Havana, as a seaman before the mast, upon the schooner "Cortez," of New York, with the full understanding that the vessel was bound to Annobon and thence on a general trading voyage upon the coast of Africa, and believed that the voyage we were to undertake was entirely of a lawful character. We sailed on the morning of the 14th April. The master was named Durand, the chief mate, Archbold; and there were, besides the steward and myself, three men before the mast. The next morning a screw gun-boat (British) came in sight; at about 8 o'clock she hoisted her ensign and fired a gun to us, to heave-to; we hoisted our colours and hove-to: presently a boat from the man-of-war, with an officer, came alongside our vessel; the officer came on board, and went into the cabin with our captain; the passengers, of whom there were eight or nine, all came on deck. The two captains (for the British officer proved to be the commander of the man-of-war) remained in the cabin about one hour, talking; afterwards came on deck, and immediately proceeded together in the British boat on board the gun-boat. In about an hour they came back: our captain, who had left sober, was then perfectly intoxicated. Our captain then called the crew aft, and asked us whether we wanted to go to Key West, or to Port Royal in the schooner? I answered, that I wanted to be let alone to continue on the voyage we had undertaken. The British captain said, "What are you talking about? if you have too much to say, I'll have you put in irons." Before this, the American colours had been hauled down by order of the American captain, but the mate, Mr. Archbold, had them put up again; they were a second time down by Captain Durand's orders. Captain Durand then said, "I have nothing more to do with you; you have to obey the British officer's orders." I replied that I had nothing to do with British officers. After this I was taken on board the man-of-war and put in irons; the mate had been taken to the man-of-war before me, and I found him there in irons; the passengers were all on board the man-of-war, four of them were in the stocks, and the rest were loose. I was on board the gun-boat some three days, until we reached Cayo Piedra. Then every one of us was made to strip, take off our shoes, and we were searched thrice. Almost every one was robbed of everything he possessed, or nearly so. I had two ounces, which were taken from me, of which one doubloon was returned me subsequently, upon my remonstrating with them. The best part of my clothes were robbed from me. At Cayo Piedra, myself and the passengers were put on board a pilot-boat, which took us to Cardenas.

(Signed

ANTONIO ^{his} FRANCISCO.
mark.

Manuel Florentino was last examined, and saith:—

I am one of the crew of the schooner "Cortez," of New York, and shipped at that port. The day after the schooner left Havana, on the 15th, she was captured by a British screw gun-boat: several passengers, the mate, and the seaman Antonio, were taken on board the man-of-war. I was called aft by Captain Durand, and told to obey the order of the British officer that was placed in charge of our vessel, after her flag had been taken down. I remained on board the schooner with our captain, the cook, and two others of our crew: after four days we were all sent on board the man-of-war; we staid on board of her two days, and were then sent to the steamer that came out of Cardenas for Havana. The sailors of the man-of-war robbed us of almost everything we had in the way of clothing. I was searched. I exhibited two half-dobloons, and told them that was all the money I had. The captain of the gun-boat gave orders to let me keep the money. We all paid our passages to Havana. Before we left Havana, the captain told me that the vessel had been chartered for a voyage to the coast of Africa.

(Signed)

MANUEL FLORENTINO.

21

In testimony whereof, I hereunto set my hand and affix my official seal, at Havana, this 27th day of April, 1858.

(Signed) A. K. BLYTHE,
United States' Consul-General.

No. 3.

The Earl of Malmesbury to Mr. Dallas.

Sir,

Foreign Office, June 1, 1858.

I HAVE the honour to acknowledge the receipt of your letter of yesterday, inclosing a copy of a despatch from the Secretary of State of the United States, and referring to various documents annexed to it, complaining of the detention and search of certain American vessels by British cruisers, and stating that while the Government of the United States is determined to use all proper exertions for the suppression of the Slave Trade, it is not less desirous that the just immunity of the vessels of the United States upon the ocean should be preserved.

I can assure you, Sir, in reply, that Her Majesty's Government are as anxious as the Government of the United States to prevent such occurrences as those to which General Cass alludes in his despatch; but the difficulties by which the question is beset are mainly occasioned by the practice of vessels engaged in the Slave Trade, making use of the flag of the United States to cover their nefarious enterprizes.

Her Majesty's Government are persuaded that the Government of the United States view this practice with the utmost indignation, and I do not therefore hesitate to request you, Sir, in pointing out the difficulties to your Government, to add that Her Majesty's Government would rejoice if the Government of the United States could suggest any means by which such an objectionable practice should be put a stop to.

In the meanwhile, however, the Board of Admiralty have enjoined the British naval commanders to carry out this duty, in regard to the suppression of the Slave Trade, on which they are employed, in a manner as little calculated as possible to give occasion to complaints such as those made by General Cass; and those injunctions will be repeated, and more specifically addressed, to the commanders of the British cruisers off Cuba.

And, as regards the particular case of the "Cortez," to which the papers which you left with me yesterday refer, I will lose no time in transmitting those papers to the Board of Admiralty, in order that the circumstances therein set forth may be strictly investigated.

I am, &c.
(Signed) MALMESBURY.

No. 4.

Mr. Dallas to the Earl of Malmesbury.—(Received June 3.)

*Legation of the United States,
London, June 3, 1858.*

My Lord,

I HAVE the honour to acknowledge the receipt of your Lordship's letter of the 1st instant, unfortunately too late in the evening of that day for immediate transmission to the Government of the United States.

At the interview with which I was honoured by your Lordship on that morning, I felt it a duty to recapitulate summarily, and with entire frankness, the circumstances which impelled me to waive the dilatory form of written communication in favour of prompt verbal representation: circumstances, as I conceived, giving to the actual relations of our two countries an universal, if not a critical, gravity.

Your Lordship obliged me by an attentive hearing. While abstaining from repeating the detailed considerations then urged, it will be permitted me to say that the despatch received from the Department of State, dated the 12th of May, 1858 (and of which I subsequently furnished, agreeably to your Lordship's desire, a copy), was read: and I left in the hands of your Lordship

copies of the Consular report and affidavits connected with the particular case of aggression made by the officers of Her Majesty's screw gun-boat "Forward" upon the American ship "Cortez." Having yesterday, by the steamer "Vanderbilt," received from Washington a further Consular report, with three other depositions more fully and precisely exposing the character of that outrage, I beg leave to submit copies of the same.

Your Lordship's note of the 1st instant will, of course, be forwarded to Washington without loss of time: but, under the clear and consistent positions heretofore, and for many years, taken by my Government, uniformly asserted in instructions to my predecessors and myself, and steadily on every appropriate occasion stated in the correspondence of this Legation, in regard to any exercise of an alleged right to stop, detain, visit, or search the merchant-vessels of the United States, navigating, under the national flag, the highway of nations, in a time of peace, I feel myself bound in candour to say, in advance,—and with a faint hope that it may yet be not absolutely unavailing,—that the contents of your Lordship's note are not likely to assuage the deep feeling excited among my countrymen by a series of abrupt and violent assaults upon their commerce, and not likely to prove satisfactory to the American Executive.

By the fraudulent prostitution of their flag, to cover a trade which, as respects their own citizens, they have subjected to the penalties of piracy, the United States are treated with a licentious insolence to which all nations are equally liable, happily, however, only from the recklessly criminal. To resent, and, if possible, to punish and prevent that insolence, is a duty exclusively incumbent upon their own self-respect; and their exertions to effect that object in every legitimate way are constant, unwearied, and sincere. But can it be pretended, for a moment, that the wrong thus inflicted by conspirators and outlaws should constitute a motive for the American Government to yield their equality among nations; to forego their acknowledged rights under the Law of Nations; to subject, voluntarily, their commerce to a foreign maritime police, and so surrender their flag to the double indignity of misuse by the wicked, and challenge by the strong?

The President cannot doubt the solicitude of Her Majesty's Government to preserve unimpaired the friendly relations of the two countries; but he will, I fear, perceive in your Lordship's note no features more promising to the future than those which for the last twenty years have proved unhappily ineffective. He has expressed "an earnest desire," at a moment of almost universal excitement among his countrymen, that the practice of detaining and searching American vessels should be "discontinued;" but he has failed to obtain from your Lordship more than the assurance of fresh instructions from the Board of Admiralty to British Naval Commanders, that the "duty in regard to the suppression of the Slave Trade" should be carried out, not by "discontinuing" the practice so deeply painful to the American Government and people, but "in a manner as little calculated as possible to give occasion to such complaints as those made by General Cass." Your Lordship, in whose just and liberal sentiments unlimited reliance is placed, will, I am sure, pardon me for suggesting that this answer may probably be appreciated as offering a palliative only for trespasses whose "discontinuance" is not promised.

Renewing, &c.
(Signed) G. M. DALLAS.

Inclosure I in No. 4.

Mr. Blythe to Mr. Appleton.

Sir,

Havana, May 8, 1858.

IN my previous despatch, I stated I had received information that the passengers on the "Cortez" purpose presenting a demand for the restitution of the money and effects taken from them, as also damages for the wrongs and injuries they sustained through the Government of the United States. Since which time they have appeared at this office, have set forth by protest their wrongs and demands, and have memorialized the President in relation thereto. The memorial and a copy of the protest I herewith transmit to you.

I send to the Department also a sworn statement of Captain Laurent, of the brig "A. A. Chapman," from which you will perceive he was not boarded,

as was rumoured, having escaped the annoyance by outsailing the British war-steamer.

Since the date of my last communication I learn, through an American resident in Sagua, that all the American vessels in that port, numbering about fifteen, were visited and boarded while lying in port by British armed boats. He states an additional fact, of no less interest to us, to wit, that a Spanish ship, which he himself was loading with sugar for Europe, was subjected to the same examination by the same party; that on the latter the visiting party went so far as to go down into the hold of the vessel, and bore into the boxes of sugar. This latter fact discloses the folly of an application to the Spanish authorities to protect our vessels while in their ports.

You will perceive I give the facts alleged to have occurred at Sagua simply as the report of a private individual. This gentleman tells me that our Consular Agent was engaged when he left in taking the statements of the Commanders of the American vessels; and you will doubtless receive the facts officially in a short time.

I have hitherto apprised the Department of my conviction that our flag is sometimes prostituted for the purposes of the Slave Traffic. But the evil is certainly not so great as to yield to its exigency the great principle of international law for which we have so strenuously contended. If it is determined to remedy the evil, let it be done by a sacrifice of money rather than of honour. If our merchant marine is to be subjected to such surveillance, is it not better to send our own national vessels at any cost to perform the act? It is known to the world that we have always contended for the freedom of the seas, and have insisted that the flag of an independent nation borne by a vessel shall give her immunity against stoppage or annoyance for purposes of visitation or search. When such is the principle announced by us it can but be matter of mortification to all who feel an interest in our flag to see the principle violated constantly, almost in sight of our own shores.

In the case of the "Cortez," I ask leave to say, in conclusion, that the same motive to action on the part of the agents of the British Government which has been illustrated in antecedent cases, is conspicuous and prominent. Whatever may be the motives of the British Government in giving its orders, the desire of gain is certainly most manifested in the execution of those orders.

I have, &c.

(Signed) A. K. BLTYHE, *Consul-General.*

Inclosure 2 in No. 4.

Protest.

*Consulate-General of the United States of America,
Island of Cuba.*

BY this public instrument of declaration and protest, be it known and made manifest, that on the day of the date hereof, before me, Andrew K. Blythe, Consul-General of the United States of America for the Island of Cuba, residing at Havana, personally came and appeared Don Juan Alverti, Don Manuel Videl Perez, Don Miguel Soler, and Don Antonio Flores, all Spanish subjects, and residents of the city of Havana, who being severally sworn to tell the truth, the whole truth, and nothing but the truth, did severally, voluntarily, freely, and solemnly declare and depose as follows:

The said Juan Alverti saith:—

That he took passage in the American schooner "Cortez," with a regular passport from the Superior Government of Cuba, and in charge of the cargo on board of said schooner, bound to the Island of Annobon, on a lawful trading voyage, and sailed from the port of Havana on the morning of the 15th of April instant; that he had with him on board in his trunk, besides his wearing apparel and other small articles of his use, the sum of 8,500 dollars in Spanish doubloons, that is, 500 doubloons; that the cargo of the schooner under his charge consisted of empty casks, rum, and provisions, to the value of 20,190 dollars; that on the following morning, Her Britannic Majesty's gun-boat "Forward" captured the schooner

“Cortez;” that a boat of the said man-of-war came alongside of the schooner, and an officer, with a detachment of men, came on deck; the officer demanded the vessel’s papers, which were exhibited to him. After awhile the American flag was hauled down, but the mate interfered, and, after some remarks, he hoisted the flag, but it was soon brought down again, and British colours hoisted in its stead; that himself, the other passengers, the mate, and others of the crew were much abused by the British officer and his men; and, subsequently, himself and others were conveyed on board the gun-boat, with all their baggage and effects. On arrival on board the man-of-war, the American mate and seamen were handcuffed and imprisoned. On the third day of being on board the “Forward,” the commander and his crew deprived him, and all the rest, of everything they possessed, excepting a portion of their clothing; that previous to this he and the others were made to strip almost naked, and their persons were searched. The man-of-war was then off Cayo Piedra; the boat of the Cardenas pilots was there, and the passengers asked the pilots to stop, but not being willing to remain, the boat was about departing, when the British commanding officer said, “Wait; for the Spaniards have plenty of doubloons, and after they have been well stripped, you may take them away.” After this, as the British commander was quite intoxicated, he treated the passengers and crew in a most outrageous manner, as if they had been guilty of some hideous crime. The English officer then returned three watches, one of them the property of this deponent, and at about 9 P.M., himself, the other passengers, and one of the “Cortez” crew, were put on board the pilot’s boat, and sent away.

The other protestants, to wit, Don Manuel Vidal Perez, Don Miguel Soler, and Don Antonio Flores, say:—

That they have heard the above statement of Don Juan Alverti; that they were all passengers together on board the schooner “Cortez;” had regular passports from the Governor-General of Cuba, and were bound on a lawful voyage, and that they had no reason to suspect that the schooner aforesaid was not a lawful trader. That the facts set forth by said Alverti are, of their knowledge, true and correct, although they do not know the exact amount of money that was taken from him on board the gun-boat, but it was a large sum of gold Spanish doubloons; that they experienced the same harsh treatment from the British officers and men of the “Forward.” The said Vidal Perez further states that he had on board the “Cortez” the sum of 6,000 dollars, which was taken from him. The said Don Miguel Soler further saith, that he was robbed by the officers and men of the British cruizer aforesaid of the sum of 422 Spanish doubloons or ounces that he had with him: and Don Antonio Flores also states, that the British officers and crew took from him the sum of 2,000 dollars. The said appearers did further declare, that they saw all the papers of the schooner “Cortez,” as well as the passports of the passengers, in the hands of the commander of the gun-boat, in the cabin of the “Cortez,” when he first came on board of said vessel; that he read and examined said papers, and subsequently denied to them, upon their asking him to return them their passports, that he had seen any papers on board the “Cortez.”

And, therefore, the said appearers did declare the protest, as by these presents they do severally, solemnly protest against the said unjustifiable and illegal acts of Her Britannic Majesty’s screw gun-boat the “Forward,” her officers and men; and do severally declare that they hold Her Britannic Majesty’s Government responsible for the money and effects taken from them individually, as also for damages for the wrongful imprisonment and other injuries to which they were subjected by Her Majesty’s officers and servants, as well as for the injury to their business by virtue of the detention to which they were subjected, and the total disruption of their lawful voyage of business on which they were proceeding. They do, therefore, in addition to the sums of money taken from them, and the value of the articles purloined, demand indemnity from the Government aforesaid.

All which matters and things were declared, alleged, and affirmed before me, the said Consul-General; and, therefore, I hereunto set my hand, and affix the seal of my office, being requested to certify and testify the premises.

(Signed)

JUAN ALVERTI.

MIGUEL SOLER.

ANTONIO FLORES.

MANUEL VIDAL ^{his} PÉREZ.
mark.

This done and protested at the city of Havana, this 30th day of April, in the year of our Lord, 1858, and of the independence of the United States the 82nd.

(Signed) A. K. BLYTHE,
United States' Consul-General in Cuba.

I do hereby certify that the foregoing is a true and correct copy of an original public instrument of protest, of record, in the archives of this Consulate-General.

Given under my hand and official seal at Havana, this 30th day of April, A.D. 1858.

(Signed) A. K. BLYTHE,
United States' Consul-General in Cuba.

No. 5.

The Earl of Malmesbury to Mr. Dallas.

Sir,

Foreign Office, June 7, 1858.

I HAVE had the honour to receive your note of the 3rd instant, and I regret to learn that you consider that my note of the 1st instant will be unsatisfactory to the Government of the United States. You will, perhaps, be inclined to modify that opinion if you take into consideration the circumstances attending its transmission to you.

You will recollect that when you called on me on Monday, the 31st, you urged upon me how desirable it was that you should be enabled to transmit by the mail of next day an expression of the anxiety felt by Her Majesty's Government to put an end to the excitement which existed in the United States in reference to the alleged outrages.

The note which I addressed to you was in that sense.

It assured you that Her Majesty's officers had been instructed to discharge their duty with the utmost discretion.

That note, however, must not be understood to be intended as a final and categorical answer to the specific complaints brought forward by your Government, nor am I in a condition even now to admit, or comment upon, *ex parte* accusations of an almost incredible character, brought against certain British officers, in the absence of any account from themselves of the transactions in question, and without having heard what they could say in their own defence.

I pointed out to you, in the course of our conversation, the increasing practice of hoisting American colours by slavers, and I beg leave herewith to transmit to you an extract of a despatch from Her Majesty's Consul-General in Cuba relative to the extensive use made of that flag to cover the Slave Trade.

I am now, Sir, also able to send you an extract of a despatch received by the Board of Admiralty from Commodore Kellett, the officer in command of Her Majesty's naval forces at Jamaica, from which document it will be seen that, according to his Report, the schooner "Cortez," recently captured by the British cruiser "Forward," was in possession neither of colours nor of papers when boarded and taken.

General Cass, in his note of the 12th of May, a copy of which you have sent me, observes, that "whatever may have been the real object of the voyage of the 'Cortez,' if she had papers showing her American character, she was subject neither to search or capture by a British cruiser;" from which declaration I infer that his Excellency would admit her liability to such proceedings if neither her papers nor her colours were forthcoming.

With statements so conflicting as those made respectively, on a point of such importance, by the British captain and the complainants, whose affidavits you have forwarded to me, the truth of the case can only be decided by time and investigation.

Her Majesty's Government have ordered a strict inquiry into the acts of Her Majesty's ship "Forward" and Her Majesty's ship "Styx;" Her Majesty's Government will also immediately give instructions to prevent, and cause to be discontinued, at the Havana, any offensive acts of "espionage," such as described by the United States' Consul, and any interference which could impede the business of the American masters; but Her Majesty's Government having never issued any orders which could justify such proceedings on the part of British officers within Cuban waters, must, until receiving further evidence, be permitted to believe that some misapprehension has existed on this point.

Although, Sir, you appear to have expected me, within less than twenty-four hours, to make a "declaration," upon a subject so fertile in controversy, and so difficult to settle, consistently with the ancient Laws of Nations, and the modern requirements of a higher morality, I must delay doing so until I have fully satisfied myself on the points in discussion, by consultation with the Law Officers of the Crown, and by a more careful perusal of the able documents communicated by General Cass to Her Majesty's Government, through Lord Napier. Until then, I must beg your indulgence, requesting you at the same time to assure your Government that while Her Majesty's Government will continue those efforts which Great Britain has perseveringly made to subdue an evil so odious as the Slave Trade, they will strictly observe that international law of the high seas, which can be to none more valuable than to the British nation.

I am, &c.
(Signed) MALMESBURY.

P.S.—Since writing the above, I have received the further account of the interruption caused to American ships by British officers, which you have sent me, accompanied by a note from yourself.

I can at present only add that these acts, as reported, would appear to be so indefensible, that I cannot but hope there must be some misrepresentation or exaggeration in the accounts which your Government have received.

M.

Inclosure 1 in No. 5.

Consul-General Crawford to the Earl of Malmesbury.

(Extract.)

Havana, May 9, 1858.

The abuse of the American flag to cover this abominable Traffic has become so great as to be almost universal; the dodge (to use the expression) has been had recourse to, because of the exemption from search which the United States' Government pretend to and insist upon. But, if that flag is to be a cloak for such nefarious purposes, and continues to be prostituted to the carrying on of the Slave Trade in the manner it is, and has been for some time past, the good sense of the American Government will surely devise the means of correcting such a shameful abuse of the national banner as is now, almost every day, to be seen here, in turning American vessels into slavers, retaining their flag and papers.

Inclosure 2 in No. 5.

Commodore Kellett to the Secretary to the Admiralty.

(Extract.)

"Imaum," at Jamaica, May 10, 1858.

I HAVE the honour to acquaint you, for the information of my Lords Commissioners of the Admiralty, that Her Majesty's gun-boat "Forward" captured a schooner, on the morning of the 16th April, in latitude 23° 45' north, longitude 82° 15' west.

Mr. Rowlett, Second Master of the "Forward," was placed in charge as prize master; he arrived here with her on the 3rd instant. The vessel has been put into the Vice-Admiralty Court, and will be adjudicated upon on Friday next, the 14th instant.

The name on the stern of this vessel is "Cortez," of New York, but she had neither colours nor papers when boarded, and she is in every respect fitted for the Slave Trade.

No. 6.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, June 8, 1858.

I HAVE to acquaint your Lordship that Mr. Dallas called upon me this morning, on my invitation, and I had some conversation with him respecting the complaints made by the Government of the United States of the interference of British cruisers with American vessels suspected of being engaged in the Slave Trade.

The substance of what I said to Mr. Dallas on this matter is contained in the Memorandum, of which I inclose a copy for your Lordship's information, and a copy of which I have also given to Mr. Dallas, who will transmit it to Washington by the American packet by which this despatch is likewise forwarded.

I also inclose a copy of the instructions given to the British cruisers on the coast of Africa, a copy of which I have given to Mr. Dallas.

I am, &c.
(Signed) MALMESBURY.

P.S.—I will write to you, at length, by the packet of the 11th instant.

M.

Inclosure 1 in No. 6.

Minute of Conversation between Mr. Dallas and the Earl of Malmesbury, June 8, 1858.

HER Majesty's Government are not prepared to justify or excuse such acts, on the part of their officers, as have been complained of by the United States' Government, if they are truly reported.

Her Majesty's Government recognize the principles of international law as laid down by General Cass in his note of the 10th of April, and that nothing in the Treaty of 1842 supersedes that law.

Her Majesty's Government, however, think it most indispensable to the interest of civilization, and the police of the seas, that there should be a power of verifying the nationality of a vessel suspected, on good grounds, of carrying false colours.

Her Majesty's Government would wish to learn from the United States' Government their views, in detail, on this point, in the hope that some mutual arrangement, by way of proceedings to be executed by our respective officers, may be found effective without being offensive.

The French have lately proposed and laid down this one, viz., that a boat may be sent alongside of a suspected ship, and may ask for papers, but not, unless invited, board the vessel. Such is our arrangement with France.

Lord Malmesbury has given Mr. Dallas a copy of our instructions to our officers.

Pending our negotiation on the above point, orders will be given to discontinue the search of United States' vessels.

Inclosure 2 in No. 6.

Instructions addressed to Commanders of British Cruizers on the Coast of Africa.

Sir,

Admiralty,

THE Treaties 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 no vessels under the French flag can be legally visited or searched, unless, from positive information or from strong grounds of suspicion, there may be reason to believe that such flag has been fraudulently assumed; in which case the utmost caution and circumspection must be used. All officers are required to observe that whenever vessels under the French flag may have been boarded upon suspicion, the masters or owners will be entitled to indemnity for any injury or losses which they may have sustained by detention, if it shall appear that the vessel is *bonâ fide* entitled to the protection of the French flag, whether engaged in the Slave Trade or not. It is only in cases in which vessels, not legally entitled to the protection of the French flag, may have assumed it fraudulently, that they can be lawfully detained or visited, and a special report in each case is to be sent direct to the Secretary of the Admiralty as well as to the Commander-in-chief, when vessels under the French flag may have been boarded on suspicion of fraud.

The same caution should be shown in visiting vessels suspected of fraudulently using the flag of the United States, or of any other nation with which Great Britain has not a Treaty under which the right of visit or search could be given to officers of Her Majesty's ships.

I am, &c.

To

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, June 11, 1858.

YOUR Lordship has received from me a Minute of the principal points of the conversation which took place between Mr. Dallas and myself on Tuesday last (the 8th instant) on the conduct of our officers cruising on the coasts of Cuba.

It is to these points that I now revert at greater length, instructing you to bring them before the United States' Government, with the hope that some defined plan of action may be agreed upon by the two Governments, which may prevent, for the future, the possibility of conduct on the part of any officers of either navy contrary to international law.

You will frankly assure the United States' Government that Her Majesty's Government have received, with great regret, the accounts to which the notes of General Cass and Mr. Dallas refer, and for the truth of which the affidavits they have inclosed are put forth as vouchers; and Her Majesty's Government do not hesitate to say, that they are not prepared to defend or justify such acts on the part of their officers as have been complained of, if they are proved by the investigation which Her Majesty's Government have required. At the present time Her Majesty's Government has no information to add to that which I sent you in reference to the capture of the "Cortez" by the "Forward."

Her Majesty's Government recognize as sound those principles of international law which have been laid down by General Cass in his note of the 10th of April to your Lordship, principles which he supports by the authority of Lord Stowell and the Duke of Wellington, and Her Majesty's Government are also aware that nothing in their Treaty of 1842 with the United States supersedes that law.

Her Majesty's Government, however, think it most indispensable to civilization and the police of the high seas, that there should exist, practically, a limited power of verifying the nationality of vessels suspected, on good grounds, of carrying false colours.

It is acknowledged, on all sides, that this fraud has been exercised by pirates of every country, but that the flag of those nations, with whom Great Britain has no Slave Treaties, is the most often prostituted by these enemies of mankind.

The American flag has, therefore, constantly been desecrated to protect the nefarious practices of such men, and if the United States' Government should insist upon an inexorable adherence to the letter of international law, and that this determination becomes known to the world, the United States' flag will then be the only one to which these malefactors will have recourse for security, and the sight and approach of that now honoured banner on the high seas would, eventually, become the cause of just suspicion and alarm to the lawful but defenceless trader. But the United States' Government cannot desire such a consummation. Both passages in General Cass's able note, and the practice of the war navy of America, induce Her Majesty's Government to believe that the verification of nationality may be obtained by some mutual arrangement in regard to proceedings to be executed by their respective officers, which may be found effective without being offensive.

General Cass observes, that "a merchant-vessel upon the high seas is protected by her national character. He who forcibly enters her, does so upon his own responsibility. Undoubtedly, if a vessel assumes a national character to which she is not entitled, and is sailing under false colours, she cannot be protected by this assumption of a nationality to which she has no claim. As the identity of a person must be determined by the officer bearing a process for his arrest, and determined at the risk of such officer, so must the national identity of a vessel be determined, at the like hazard to him who, doubting the flag she displays, searches her to ascertain her true character. There, no doubt, may be circumstances which would go far to modify the complaints a nation would have a right to make for such a violation of its sovereignty. If the boarding officer had just grounds for suspicion, and departed himself with propriety in the performance of his task, doing no injury, and peaceably retiring when satisfied of his error, no nation would make such an act the subject of serious reclamation."

Her Majesty's Government agree entirely in this view of the case, and the question therefore becomes one solely of discretion on the part of the acting officer. It appears to Her Majesty's Government that it is one extremely dangerous to entrust, and onerous to bear; and that an exact definition of what each respective

State would permit, for verifying nationality, and thereby securing general trade against piracy, should be agreed upon between Great Britain and the United States, and clearly embodied in their instructions to their naval commanders.

The cruisers of the United States do not themselves shrink from the responsibility of visit, for I find in the papers presented to Congress on the 21st of April last, the following allusion to their practice, as stated in a report from the commander of the United States' ship "Dale," dated St. Paul de Loanda, October 9, 1857:—

"On the 20th (September) I discovered a barque off Black Point; stood for her, and boarded her: she proved to be the French barque 'Clara,' with a French officer on board to give her a national character." "In Loango Bay I examined the papers of the French brig 'Merle,' of Havre, engaged in trading with the natives. From the degraded condition of the natives of the coast, I cannot but believe that this action of the French Government will result in their benefit."

You will therefore urge upon General Cass to suggest to Her Majesty's Government some rule to which our officers should mutually adhere under the "circumstances" which he describes "as going far to modify the complaint a nation would have a right to make for wilful violation of its rights of sovereignty."

The view taken of the question by Admiral Hamelin, as communicated to me a short time ago by the French Chargé d'Affaires, is, that in time of peace, the right to ascertain the national character of a foreign merchant-vessel should, except under peculiar circumstances and urgent necessity, be restricted in its exercise to compelling a merchant-vessel to show its colours; that in certain cases such a vessel may be spoken with, avoiding, however, any interruption of its course; and that in order to warrant boarding a vessel under French colours, the proceedings of such vessel should be such as to afford reasonable grounds of suspicion.

This, to a certain degree, is a security against the fraudulent use of colours, and if Her Majesty's Government do not consider it as effective a process as they could wish should be exercised, and to which they would be ready reciprocally to subject the flag of Great Britain, it is at least a safeguard against the occurrence of such acts as the United States' Government complain of, and restricts the discretion of officers within intelligible limits.

Mr. Dallas received from me a copy of the Admiralty's general instructions to Her Majesty's commanders, which appear to be entirely in accordance with the principles of international law laid down by General Cass in his note of the 10th of April, and if he has not furnished General Cass with a copy, your Lordship will do so.

Her Majesty's Government, anxious to remove all possible repetition of the acts which appear to have caused so much excitement in the United States, and which might, if repeated at this moment, be detrimental to the good relations of the two countries, have sent further orders to the officer commanding the Cuban squadron to discontinue the search of any vessel of the United States until some arrangement, in the sense I have pointed out, shall be made by your Lordship with the United States' Government, or declined on their part.

Should the Government of the United States not think fit to adopt some mutual regulation by which the officers of both States shall be enabled to verify the nationality of a suspicious ship, without offence to its crew or its country, Her Majesty's Government will deeply regret that an opportunity has been lost to secure, honourably and for ever, the two nations from those vexatious and irritating controversies which are inevitable as long as the letter of international law is made inflexibly to override those measures which experience and common sense recommend as necessary for the security of life and property on the high seas.

I am, &c.

(Signed) MALMESBURY.

No. 8.

Lord Napier to the Earl of Malmesbury.—(Received June 21.)

My Lord,

Washington, June 7, 1858.

I WAITED upon the Secretary of State on the 2nd instant, and engaged him in conversation on the late incidents in the Gulf of Mexico, and the continued prosecution of the Slave Trade in those waters by American vessels, or vessels fraudu-

lently adopting the American flag, for the purpose of eluding the inspection of Her Majesty's cruizers.

With reference to the detention of American shipping by Her Majesty's vessels of war, I stated my belief that the proceedings of the latter had been exaggerated and distorted; that on dispassionate inquiry it would probably be found that no injury to life and property had been inflicted, and that no example of violence or intemperance would be substantiated against any British officer. I added, however, that it might appear that the practice of visitation or inquiry had been exercised generally; that it had been applied indiscriminately to vessels passing through the waters known to be frequented by slave-traders, without grounds of suspicion in each instance. Should such prove to be the case, I believed the wishes of Her Majesty's Government had been exceeded, that Her Majesty's Government would not sanction or support any system of supervision over the traders of the United States in the narrow seas almost within sight of their own shores. I was aware that such a practice was altogether incompatible with the principles of maritime law held in the United States; that it would be resisted by the whole united American people, and that its continuance would involve the hazards of a war between England and this country. I informed the Secretary of State that I had communicated these views to the Commander-in-chief on the West India station by despatches which would be forwarded by a special steam-vessel to their destination, and that I had submitted my opinion to the Admiral that it would be desirable to suspend the proceedings of Her Majesty's officers if they were of the nature complained of, pending the issue of definitive instructions by Her Majesty's Government.

General Cass avowed that in many cases there had been exaggeration in the accounts circulated respecting British officers, but that enough remained to prove an interference with the American flag which the Government of the United States would never submit to. He did not believe that this interference had been deliberately projected by Her Majesty's Government, or that it proceeded from any hostile or offensive policy on their part, and that he made little doubt that such a disavowal would be made as would be satisfactory to his Government. General Cass intimated his disapproval of the violent proposals offered in the Senate, and his judgment that it would not be necessary to resort to any other measures of resistance than those which had been adopted, until an answer had been received from London.

It is scarcely necessary that I should again formally submit to Her Majesty's Government an opinion which has already been conveyed in my correspondence, both with the Foreign Office and the Commander-in-chief. On mature reflection, and after conversation with a variety of persons belonging to every party, I adhere to the conviction, which might be gathered from the history of the past as well as from the aspect of the present, that the Government and people of the United States will contend against the right of maritime visitation on every sea, for every purpose and in every form.

I do not think that much anxiety will be evinced to obtain a disavowal of any doctrine on this matter which Her Majesty's Government may speculatively entertain, but the whole nation will take up arms to prevent that doctrine being carried into execution. Some humane and zealous persons in the north, under strong impressions of the criminality of slavery, and the trade by which it is aggravated and perpetuated, may secretly entertain or timidly advocate other principles of maritime police; but those persons are powerless before the American people, and will have no part in shaping the resolutions of the Government of the United States in its relations with Great Britain.

In continuing my conversation with General Cass, I adverted to two points to which I had before called his attention, as reported in my despatch of the 19th of April last; I mean the employment of American vessels of war in controlling the Slave Trade in the Gulf, and the use of those remonstrances with the Government of Spain, which are prescribed by the terms of the Treaty of 1842.

On the first head General Cass appeared to admit that the vessels recently dispatched to the Gulf had no specific instructions for the suppression of the Slave Trade, though he "saw no objection" to such instructions being given, and thought that their exertions might very properly be applied in that direction. On being pressed by me on this topic, the Secretary of State replied, that he could not assure me that any American vessels of war would be maintained on the coast of Cuba, with a view to the extinction of the Slave Trade.

With reference to the use of diplomatic remonstrance at Madrid, the Secretary of State answered, as he did before, that he presumed the representations designed by the Treaty had been made; he desired the Assistant Secretary of State, who was present, to inquire into the subject; he acknowledged the binding nature of the engagement, but he did not hold out to me any positive assurance that his good offices would be afforded in the sense desired.

I reminded General Cass that, in an official note, he had pointed to Cuba as the proper locality in which the Slave Trade might be effectually attacked, and that there was in the same document a hint, or insinuation, that Her Majesty's Government might not have used all their endeavours with the Government of Spain for the abrogation of the traffic which the Cabinet of Madrid was bound, by its Treaty engagements, to abolish. I predicted to the Secretary of State that these reflections would not pass unobserved in England; that the British people, still sincerely enlisted against the prosecution of the Slave Trade, finding their present efforts in part checked by the attitude and opinions of the United States, and still frustrated by the faithlessness of Spain, would turn against the latter Government, with an indignant determination to force upon it the exact performance of its obligations. The British Government might possibly find itself under the necessity of proceeding to extremities against Spain; some constraint might become unavoidable; the coast of Cuba would be the natural scene for the exercise of compulsory proceedings; and if a blockade were resorted to, he might well imagine that such a measure would be unpalatable to the United States, and embarrassing to our mutual relations. I therefore argued, that in our common interest, and for the sake of our continued good understanding, it was most desirable that the Government of the United States should assist Her Majesty's Government, both by counsel and by material aid, in the suppression of the Slave Trade in Cuba.

General Cass simply remarked, that "he had not advised us to blockade Cuba;" and he did not say anything which would in the least justify me in promising your Lordship any co-operation on the part of the United States in furthering the benevolent exertions of Her Majesty's Government.

I have, &c.
(Signed) NAPIER.

No. 9.

Lord Napier to the Earl of Malmesbury.—(Received June 28.)

My Lord,

Washington, June 13, 1858.

IN a recent conversation with General Cass, I stated my opinion that, when the late incidents in the Gulf of Mexico came to be dispassionately investigated, it would be found that the detention of shipping by Her Majesty's cruisers had frequently been prompted by the refusal of the masters of American vessels to display their colours. I added that some indications to this effect had already appeared in the newspapers, and that I had formerly, in conversation with naval officers, heard them complain that there was a dogged indisposition on the part of the merchant captains of the United States to hoist their flag when required to do so by an English man-of-war.

I then asked General Cass for an unofficial statement of his opinion as to the obligation of a trading-vessel to show her colours to the armed vessel of a foreign Power.

General Cass speaking unofficially, replied, that he conceived that a ship-of-war had a right to demand the exhibition of colours, and in exercising that right to make the requisite signals and demonstrations. Where no national colours were exhibited there could be no offence. The vessel without colours might be a pirate or a British vessel, which the English cruiser had a right to visit.

The Assistant-Secretary of State who was present, joined in the conversation, and seemed inclined to demur to the doctrine of General Cass. He intimated that the vessel without colours should be deemed an honest vessel, unless particular suspicion lay against her, and that every vessel was not liable to be called upon to make a declaration of nationality at the order of a foreign cruiser. The Secretary of State objected the inability in which, according to this theory, the British ship-of-war would be placed in reference to the control of vessels of its own country.

I have adverted to the same subject in conversation with the Secretary of the

Navy, and with several officers of the American service. The general impression certainly appears to be that, the vessel-of-war is justified in enforcing the exhibition of a flag, but not to go any further in ascertaining whether the flag is justly assumed.

A captain of the United States' Navy informed me that American merchant-vessels navigating the neighbouring waters not unfrequently manifested a disinclination to hoist a flag even at the bidding of the ships-of-war of the United States.

The conjecture which I hazarded to General Cass is confirmed by the tenour of the inclosed letter from Commander Rodgers of the United States' steam-vessel "Waterwitch," to the Navy Department, in which Lieutenant Pym, of Her Majesty's gun-boat "Jasper" is reported to have "admitted that in certain cases he had fired near vessels to make them show their colours."

I have, &c.
(Signed) NAPIER.

Inclosure in No. 9.

Commander Rodgers, United States' Navy, to the Secretary of the Navy.

Sir, *United States' steamer "Waterwitch," Key West, June 3, 1858.*
I ARRIVED here safely to-day for coal. All well on board. I leave to-morrow for Havana, where I shall find Her Britannic Majesty's steamer "Devastation," which has brought instructions from Admiral Seymour to the cruisers upon the coast of Cuba.

Her Britannic Majesty's steam gun-boat "Jasper" came into the harbour this morning in search of the "Styx," to deliver despatches from the Admiral. Lieutenant Pym stated to me that his instructions were printed, and were dated, he believed, in 1849; that they were, at all events, the identical instructions which he had acted upon on the coast of Africa nine years ago. He said that he believed, or rather was sure, that no new instructions had been received from the British Government for the guidance of the vessels on the coast of Cuba. He said that the "Creole" was a slaver, and that, soon after her capture, her colours and papers both disappeared—the captain declaring that he was not entitled to American papers or colours.

He said that in another case where he had sent his quartermaster with a spy-glass to ask permission to ascend the mast of the outermost vessel in the harbour of Matanzas, in order to see whether the "Styx" was in sight, the captain said, laughingly, afterwards, that he had hoaxed a newspaper writer into the belief that he had been boarded by British fillibusters. He said that he was sure that, upon examination, he would be found to have done no wrong to the American flag.

He admitted that, in certain cases, he had fired near vessels, to make them show their colours, and asked me whether he had been guilty of wrong in so doing. To this I said that I had no official opinion, but that I thought not.

However the law may be in this case, it is held, so far as I know the usage of the sea-service, itself as a law, that men-of-war should show their flags to each other; and it is the general opinion of naval men that merchant-vessels, upon neglect or refusal to do so, may be compelled to it without trenching upon their rights.

Lieutenant Pym seemed surprised at the light in which the acts of the British cruisers are regarded by the Government of the United States.

I have, &c.
(Signed) JOHN. RODGERS, *Commander.*
Hon. I. Toucey, Secretary of the Navy.

No. 10.

Lord Napier to the Earl of Malmesbury.—(Received July 5.)

(Extract.)

Washington, June 21, 1858.

I WAITED upon General Cass this forenoon, when he hastened to inform me that he had just received very gratifying intelligence from Mr. Dallas. He then showed me a Minute drawn up by your Lordship, embodying the substance, or the conclusions, of a long conversation which you had held with the American Minister

on the 8th instant, to the effect that Her Majesty's Government adhered to the general principles of maritime law asserted by General Cass; that they did not defend the recent actions of British officers, if correctly reported; and that, pending the negotiation of some means for the verification of the nationality of vessels, orders had been issued for the discontinuance of the search of American ships.

General Cass also permitted me to read a portion of the despatch accompanying this document, in which Mr. Dallas congratulated himself and his Government on what he deemed to be a change in the sentiments of Her Majesty's Government on the question under discussion since that discussion was opened in London.

General Cass expressed his satisfaction with the tenour of your Lordship's remarks to Mr. Dallas, and his confidence that the questions at issue would be amicably adjusted.

I did not fail to call the attention of General Cass to the exercise of the right of visitation or inquiry by Commander Mc Blair, of the United States' ship "Dale," in the case of the French brig "Merle," as reported in the documents presented to the Senate.

The Secretary of State admitted that American officers might occasionally practise what he termed "Quarter-deck Law," but the right was not claimed by the United States, nor would the conduct of an officer acting thus be approved.

No. 11.

Lord Napier to the Earl of Malmesbury.—(Received July 11.)

My Lord,

Washington, June 24, 1858.

IN conformity with your Lordship's orders, I called upon General Cass this forenoon, and read aloud to him your Lordship's despatch of the 11th instant, relative to the recent detention of American shipping in the Gulf of Mexico, and the necessity of some expedient being devised by which the nationality of vessels may be ascertained in a manner efficient, and yet not offensive.

I also placed a copy of this communication in the hands of the Secretary of State.

General Cass stated to me in reply, that the course taken by Her Majesty's Government was worthy of a great and generous country; of one whose unquestioned power and promptitude to repel aggression was accompanied by a disposition to recognize an error, and redress an injury, when inconsiderately committed. He assured me, emphatically, that after the satisfactory declarations made by your Lordship, both in the Minute transmitted by Mr. Dallas, and in the despatch of which I was then the channel, the Government of the United States would give their attentive consideration to any proposal which Her Majesty's Government might suggest for the verification of the nationality of vessels, and their right to the flag which they displayed.

The method of proceeding alluded to in the minute of conversation above-mentioned, as having been sanctioned by France, was not, however, explained with such distinctness as to enable the American Cabinet to pass an opinion on its merits.

I remarked to General Cass that Her Majesty's Government preferred that the Government of the United States should take the initiative, and communicate their own views on this subject.

The Secretary of State answered, that on receiving his last intelligence from Mr. Dallas, he had addressed to that Minister a despatch, in which he had expressed his desire to have a more accurate knowledge of the plan adopted in conjunction with France, and that the suggestion for a scheme adapted to counteract the evil complained of, should originate with Her Majesty's Government.

It is obvious that the Government of the United States must be reluctant to move in a question which involves many difficulties, and which is particularly embarrassing here on account of the peculiar sensitiveness of the American people in regard to every form of maritime supervision. The Secretary of State would naturally be reluctant to face the responsibility of starting a proposal which might become the ground of opposition in Congress; and of attacks by the press.

A measure, offered with the united authority of England and France, would not only be more agreeable to the American Cabinet, but more acceptable to the Legislature, as it would have no direct connection with the party in power.

I think, therefore, that with a view to an early settlement of the matter at issue, it would be desirable for Her Majesty's Government to mature some well-considered and practical project with the Imperial Government, and then recommend it to the adoption of the Cabinet of Washington.

I have, &c.
(Signed) NAPIER.

No. 12.

General Cass to Mr. Dallas.—(Communicated to the Earl of Malmesbury by Mr. Dallas, July 19.)

Sir,

Department of State, Washington, June 30, 1858.

YOUR despatches Nos. 104, 106, and 108, together with the accompanying copies of the papers referred to, have been received at this Department, and have been laid before the President; and I am gratified in being able to convey to you the assurance that he fully approves your correspondence with Lord Malmesbury on the important subject committed to you.

As to the aggressions upon the vessels of the United States by British armed cruisers, which led to this correspondence, and which you have made known to Her Britannic Majesty's Government, it is not necessary that I should enter into any further consideration of them at this time. When the facts shall have been correctly ascertained, and duly considered, I do not doubt but that the British Government will promptly redress any injuries which may have been inflicted, and will mark with its displeasure those officers whose conduct has given just cause of offence to the United States.

And in addition to the satisfactory assurances which your correspondence contains of the views of the British Government, it gives me pleasure to be able to inform you that this Department, by direction of Lord Malmesbury, has been furnished by Lord Napier with the copy of a letter addressed to his Lordship by Lord Malmesbury, and dated the 11th instant, in which the same purposes are avowed, and the same principles recognized, as reported in your despatch of the 8th instant. A copy of this document is herewith inclosed.

The President desires you would express to Lord Malmesbury his gratification at this satisfactory termination of the controversy which has given so much trouble to our respective Governments concerning the claim of a right in behalf of a British cruiser, in time of peace, to search or visit American merchant-vessels upon the ocean. Her Britannic Majesty's Government has disclaimed this pretension, and recognized the principles of international law laid down in the letter from this Department to Lord Napier, of the 10th of April last, and which has been maintained by distinguished British statesmen, and especially by that eminent jurist, Lord Stowell, who said emphatically, while deciding a case judicially before him, that "no nation can exercise a right of visitation and search upon the common and unappropriated parts of the ocean, except from the belligerent claim."

The President is aware of the abuses to which the fraudulent assumption of the flag of one Power by the citizens or subjects of another, may give rise, and he deeply regrets that the flag of the United States has ever been prostituted to unworthy purposes by such a reprehensible proceeding. At the same time he entertains a strong conviction that the occasional abuse of the flag of any nation is an evil far less to be deprecated than would be the establishment of a pretension like this, which is incompatible with the freedom of the seas. But while avowing this conviction, he instructs me to say that the United States are not less solicitous than Great Britain that a remedy should be found for this false employment of national colours, to which Lord Malmesbury refers in just terms of condemnation. And the President, though not prepared to make any suggestion upon the subject, is yet ready to receive any propositions which the British Government may feel disposed to make, and to consider them with an earnest hope that the object may be safely and satisfactorily attained.

But, while communicating to his Lordship these favourable sentiments of the President, it is due to the occasion to say that there are grave difficulties in the way of reconciling any kind of examination, looking to the detention of vessels, with that entire immunity which is so dear to the people of the United States, and

so important to all commercial nations. It is a practical question whose solution requires much cautious consideration, and all the assurance that can now be given by this Government is, that it shall be discussed with an anxious desire that it may be so adjusted as to prevent the evil to be complained of, while, at the same time, the ocean shall be left free to the merchant-vessels of all nations, each maintaining its own police without the interference of others.

The United States have enacted a stringent and comprehensive code of laws against the African Slave Trade, and the President is authorized to employ the naval force of the country in its suppression. Since the Treaty of 1842, and in conformity with its requisitions, a squadron carrying eighty guns has been maintained in this service upon the coast of Africa, and with a result, I regret to say, no way commensurate with the loss of life and property it has occasioned. The employment of this squadron has, however, prevented such exertions from being made in other quarters of the world for the repression of this Traffic as would otherwise have been undertaken, and which would, probably, have proved far more effectual. And the President is under the impression that, if this squadron were withdrawn from the African coast, the vessels composing it might be ordered upon service elsewhere to much better advantage in the suppression of this criminal employment; and he is seriously considering the subject, with a view to determine whether it is not advisable to give the year's notice provided for in the Treaty of 1842, with a view to the abrogation of Article VIII, which creates an obligation on the part of our respective Governments to maintain squadrons of repression in the African seas.

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

I am, &c.
(Signed) LEW. CASS.

No. 13.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, July 23, 1858.

ON the 19th instant Mr. Dallas called on me, and read to me a note, of which I inclose a copy.*

I heard with great satisfaction that the course adopted by Her Majesty's Government in respect to the complaints against our cruisers, and the general question of the right of search and visit, had convinced the United States' Government that Great Britain is not desirous of asserting or enjoying any public privileges at the expense of the interest and honour of other nations.

I also heard with pleasure that General Cass was prepared and willing to receive and consider any suggestions on the part of Her Majesty's Government, which might secure a proper verification of the flag assumed by merchant-vessels, without interrupting commerce, or wounding the national susceptibilities of maritime States.

It is a question so difficult, and is of such a delicate, though practical, character, that Her Majesty's Government will not offer such suggestions hastily, nor without having first consulted the feelings and opinions of commercial countries, and of men experienced in the trade and navigation of the ocean.

When convinced that they can lay before the United States a proposition of the nature which they desire to obtain, it will be submitted to the United States' Government.

I am, &c.
(Signed) MALMESBURY.

No. 14.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, January 14, 1859.

WITH reference to your Lordship's despatch of the 24th of June last, stating that the Government of the United States would give their attentive con-

* No. 12.

sideration to any proposal which Her Majesty's Government might suggest for the verification of the nationality of merchant-vessels, and their right to the flag which they displayed, I have to acquaint you that Her Majesty's Government invited the French Government to come to an understanding with them as to an agreement, to be made in the first instance between themselves, for establishing an identical code of orders in the French and British navies, which should enable the officers of ships of war to verify the nationality of a suspicious vessel, and which, when so established, might be subsequently submitted for adoption by the United States.

I now transmit to your Lordship a copy of a despatch from Count Walewski, which has been communicated to me by the Duke of Malakoff, inclosing a Memorandum stating the views of the French Government upon this subject.

Although Her Majesty's Government consider the proposals of the French Government for settling the question of the right of visit as far from effective, and not calculated to relieve the commanders of ships of war from a most onerous responsibility, they nevertheless consider it to be so important that an identical Code of Instructions, on this subject, should be given to their cruizers by the Governments of all Maritime Powers, that they do not hesitate to invite the Government of the United States to acquiesce in the proposals made by the French Government, and to give orders to the Commanders of their Naval Forces in strict accordance therewith.

You will, therefore, make the necessary communication to General Cass without delay.

I am, &c.
(Signed) MALMESBURY.

Inclosure 1 in No. 14.

Count Walewski to the Duke of Malakoff.

M. le Maréchal,

Vichy, le 4 Septembre, 1858.

EN vous envoyant, le 26 Juillet dernier, copie d'une dépêche du Secrétaire d'Etat de la Reine à Lord Cowley, dont j'avais reçu communication, je me réservais de vous faire connaître la suite que nous pourrions donner à la proposition qu'elle contenait, d'une entente entre le Gouvernement de l'Empereur et celui de Sa Majesté Britannique, au sujet de la vérification de nationalité des navires marchands. Après avoir examiné cette question de concert avec M. le Ministre de la Marine, j'ai résumé dans la note ci-jointe les bases de l'accord qui pourrait s'établir entre toutes les Puissances Maritimes, en matière d'enquête de pavillon. Si les règles qui en résulteraient se trouvaient unanimement admises, on n'aurait plus, je crois, à appréhender les abus qui sont toujours possibles en l'état de choses, ni, par suite, les conflits qui aujourd'hui peuvent inopinément troubler les bonnes relations des deux Etats. Je vous prie, M. le Maréchal, de vouloir bien entretenir Lord Malmesbury de notre manière de voir, et de me faire savoir si le Gouvernement de Sa Majesté Britannique est disposé à l'accueillir.

Je me propose d'écrire dans le même sens à Washington, afin d'arriver à un accord complet entre les trois Gouvernements sur la solution de cette question.

Agréé, &c.
(Signé) A. WALEWSKI.

(Translation.)

M. le Maréchal,

Vichy, September 4, 1858.

IN forwarding to you, on the 26th of July last, a copy of a despatch addressed by the Queen's Secretary of State to Lord Cowley, which had been communicated to me, I deferred informing you how we could carry out the proposition which it contained of establishing an agreement between the Government of the Emperor and that of Her Britannic Majesty, on the subject of the verification of the nationality of merchant-vessels. After having examined this question in concert with the Minister of Marine, I have summed up in the annexed note the bases of the agreement which might be established between all the maritime Powers on the subject of the verification of a ship's nationality. If the rules which would result from this note were to be unanimously assented to, there would, in my belief, no longer be any reason to apprehend the abuses which are always possible in the

present state of things : nor, consequently, to fear those disputes which may, now, unexpectedly disturb the friendly relations of the two States. I beg you, M. le Maréchal, to have the kindness to explain our views to Lord Malmesbury, and to let me know whether Her Britannic Majesty's Government is disposed to receive them favourably.

I intend to write in the same spirit to Washington, in order to arrive at a complete agreement between the three Governments in regard to this question.

Receive, &c.

(Signed) A. WALEWSKI.

Inclosure 2 in No. 14.

Memorandum.

EN vertu de l'immunité de pavillons, tout bâtiment marchand navigant 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 constatation 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 de guerre, 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 premier 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.

Dès 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 la 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 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 en est à toute hypothèse bien entendue 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 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, ou n'aura pas été faite d'une manière convenable, il y aura lieu à indemnité.

(Translation.)

IN virtue of the principle of the immunity of national flags, every merchant-vessel navigating the high seas is exempt from all foreign jurisdiction. A ship of war can, therefore, only visit, detain, arrest, and seize those merchant-vessels which she recognizes as being of the same nationality as herself.

The flag being *primâ facie* the distinctive sign of the nationality of a vessel, and consequently the proof of the jurisdiction to which she is subject, it is natural that a merchant-vessel, on finding herself on the high seas in the presence of a man-of-war, should hoist her flag to attest her nationality: so soon as the man-of-war has made herself known by hoisting her colours, the merchant-vessel ought likewise to hoist hers. If she refuses to hoist her flag it is agreed that she may be summoned to do so, first by a blank gun, and, if that remains without effect, by a second gun shotted, but pointed so as not to strike her.

As soon as the merchant-vessel, by hoisting her flag, has established her nationality, the foreign man-of-war can claim no authority over her. The utmost which the latter may do is, in certain cases, to claim the right of speaking with her; that is to say, to ask her to reply to questions addressed to her through a speaking trumpet, but without interfering with her course.

When, however, the presumption of nationality resulting from the colours hoisted by a merchant-vessel is rendered seriously doubtful by information, or by signs, of a nature to encourage the belief that the vessel does not belong to the nation whose colours she has assumed, then the foreign man-of-war may have recourse to a verification of the nationality assumed.

With this object a boat shall be sent to the suspected vessel, which shall have been previously hailed to announce the intended visit. The verification shall consist of the examination of the papers proving the nationality of the vessel. The exhibition of these documents is all that can be desired. All inquiry into the nature of the cargo, commercial operations, or, in a word, on any other point but that of nationality, all search or visit of any kind, are absolutely forbidden. The officer entrusted with the verification ought to conduct his proceedings with great discretion and with all courtesy, and leave the vessel as soon as the verification has been effected, offering to enter in the ship's papers the fact and circumstances of the verification, and the motives which determined him to resort to it.

Except in the case of legitimate suspicion of fraud, it ought never otherwise to be necessary for the commander of a man-of-war to go or to send on board a merchant-vessel, so numerous are the signs which, putting colours out of the question, reveal to the eye of a seaman the nationality of a vessel.

In every case it is clearly understood that the man-of-war that decides on boarding a foreign merchant-vessel does it at her own risk and peril, and remains responsible for all the consequences which may be the result of her act.

The commander of the foreign ship of war who shall have had recourse to this measure ought, in all cases, to make it the subject of a report to his Government, and should explain the reasons of his having so acted. This report, and the reasons which led to the verification, shall be communicated officially to the Government to which the vessel whose colours have been verified shall belong.

Whenever the examination shall not be justified by evident reasons, or shall not have been conducted in a suitable manner, a claim may arise for indemnity.

No. 15.

The Earl of Malmesbury to Lord Napier.

(Extract.)

Foreign Office, January 14, 1859.

WITH reference to my despatch of this day's date, I inclose for your Lordship's information, copies of the correspondence that has passed between Her Majesty's Government and the Government of His Imperial Majesty with regard to the proposals made by Count Walewski on the 4th of September last, respecting the measures that should be adopted by vessels of war to secure the verification of the flag of merchant-vessels on the high seas.

Your Lordship will observe that, in the opinion of Her Majesty's Government, those proposals fail in one important particular, namely, what is to be done by a man-of-war if a vessel does not display her flag after a gun with shot in it has been fired, so as not to strike her.

Her Majesty's Government regret that they have been unable to obtain from the French Government any improvement of their proposal in this particular, and they fear that it is not probable that the United States will view the desire Her Majesty's Government have expressed for an alteration with reference to this important point in a more favourable light; but should your Lordship have any opportunity of urging with success upon the Government of the United States the necessity of so far altering the instructions to be given to naval officers, as to secure that in every case a merchant-ship should be compelled, by force if necessary, to hoist the colours of the nation to which she claims to belong, your Lordship will not fail to do so.

Inclosure 1 in No. 15.

The Earl of Malmesbury to Earl Cowley.

My Lord,

Foreign Office, October 20, 1858.

IN my despatch of the 18th ultimo, I informed your Excellency that I was in communication with the Lords Commissioners of the Admiralty upon the proposal for the settlement of the question of the right of visit contained in Count Walewski's despatch to the Duke of Malakoff of the 4th ultimo.

I have now to acquaint your Excellency that the Lords of the Admiralty have stated to me that they consider that unless some additions are made to that proposal, or some explanations afforded as to its meaning, great difficulties and misunderstandings may arise as to the regulations to be founded thereupon.

The right of a man-of-war to call upon a merchant-vessel at sea to declare her nationality by hoisting her true flag, is laid down in the French proposition, and the means, up to a certain point, of compelling compliance with a summons, are also shown; but the French proposition is silent as to what is to be done by the man-of-war if a vessel does not display her flag after a gun with shot in it has been fired so as not to strike her.

Is it to be assumed, as a matter of course, that the man-of-war may fire her next shot so as to strike the merchant-vessel, if her two summonses be disregarded?

It appears to the Lords of the Admiralty that this point should be cleared up before the proposition is accepted as the basis of an agreement, or it may otherwise be found that the first step towards the verification of the nationality of a merchant-vessel could not be taken.

The regulations to be framed upon these proposals are intended, not only for the coast of Africa, but for the high seas everywhere, and not more to assist in putting down the Slave Trade on the coast of Africa, than piracy wherever it prevails.

When the flag of the merchant-vessel has once been hoisted, the man-of-war may hail her, but may not interrupt her course (and here the difficulty begins), unless the nationality of the vessel is open to serious doubt from information received, or from other indications which give occasion to suppose that the vessel does not belong to the nation whose colours she has assumed.

The proposition goes on to state how the vessel of war is to verify the flag in cases of "serious doubt;" and here the Lords of the Admiralty notice a grave omission in the proposition.

It says: "A boat shall be detached towards the suspected vessel, which shall have been previously hailed, to give her notice."

What is to be done if the merchant-vessel stands on her course, so as to prevent the boat from coming alongside; or if the man-of-war cannot get near enough to hail, and acquaint the vessel with her intention to send on board of her, from want of speed, or stress of weather, or other cause?

May the man-of-war give her the two warnings, as prescribed above, to make her show her flag, and then fire into her, if she does not heave-to and allow the boat to come alongside?

The Lords of the Admiralty consider that this point should be stated more

clearly, in order that there may be no doubt as to the nature of the regulations which would be proposed for subsequent agreement.

When once on board, the verification is to consist in the examination of the papers, and the papers alone. No question may be asked as to the nature of cargo, nor any kind of examination made as to crew, passengers, or the nature of commerce in which the vessel is engaged.

At present a British officer, before proceeding to search a vessel, is ordered to gain every information which can be obtained by inquiries courteously made.

Such inquiries would be as much a breach of this proposed agreement as an actual search. In fact, it appears to the Lords of the Admiralty, that a false flag, and a forged set of papers, would confer absolute immunity to any vessel.

The proposition goes on to state, that there are few occasions on which it is necessary to board a vessel in order to verify her nationality, there being so many points which show to a sailor's eye the nationality of a vessel. The Lords of the Admiralty observe that, though this is undoubtedly true, the signs which show the ownership of a vessel are not equally clear.

A vessel seen may hoist a French flag, and a sailor's eye may at once perceive that the ship is French in origin, but the vessel may have been sold and be owned by a merchant of the Havana, and have a slave cargo on board. None of these facts can be ascertained except by a close examination of the papers, the mustering of the crew and passengers, to see if they agree with the list; and the ownership and cargo, and other particulars of the voyage, can only be ascertained by a careful questioning of the master and other persons found on board.

The Lords of the Admiralty quite agree with the French proposition, that in every case in which a vessel is boarded by a man-of-war, it must be done at the risk and on the responsibility of the officer, if it is done wantonly and without sufficient cause. Their Lordships see no objection to the proposal that, in every case of a visit made, a report shall be made by the officer to his Government in the manner there pointed out; and that the Government to which the vessel visited belongs, shall also be made acquainted with the fact and the reason of the visit, and that in every case when the visit shall not have been justified by evident reasons, or improperly performed, a claim proportioned to the damage sustained may be preferred.

The Lords of the Admiralty have further called my attention to the increased difficulty with which officers cruising for the suppression of the Slave Trade on the coast of Africa will, in their opinion, have to contend, unless the proposition made by the French Government is amended, and made more complete in those points on which their Lordships have indicated its present deficiencies.

Unless this be done, they express their decided opinion that the general Law of Nations admitted by General Cass, and quoted by me in my despatch to your Excellency, dated the 20th of July, gives them a more effective power to check the Slave Trade than a code of regulations strictly framed on the French proposals, at present suggested, would afford.

I have to instruct your Excellency to communicate to Count Walewski the above views of the Lords Commissioners of the Admiralty upon the proposal contained in his Excellency's despatch to the Duke of Malakoff of the 4th ultimo, and to invite his Excellency to favour Her Majesty's Government, at his earliest convenience, with any observations which the French Government may have to offer in reply; as Her Majesty's Government are anxious to make, with as little delay as possible, a communication to the Governments of other maritime States upon this subject.

It appears to Her Majesty's Government that the most important point to determine in the interest of general safety and order on the high seas is, that a man-of-war shall have a right to oblige a merchant-vessel to show her colours when challenged to do so, and that if the latter should refuse, force may be employed. Without this first proceeding being acknowledged and established, nothing can be done.

I am, &c.
(Signed) MALMESBURY

Inclosure 2 in No. 15.

The Earl of Malmesbury to Earl Cowley.

My Lord,

Foreign Office, October 23, 1858.

I HAVE to acquaint your Excellency that since my despatch of the 20th instant was written, I have received from the Law Officers of the Crown their opinion upon the proposal for settling the question of the right of visit contained in the despatch addressed to the Duke of Malakoff by Count Walewski, on the 4th ultimo.

I have to refer your Excellency to that part of my despatch of the 20th of July, in which I submitted two questions for the consideration of the French Government, namely:—1st. How far a ship of war, which is assumed to have a right to make a merchant-vessel show her colours, and so declare her nationality, has a power to enforce that right; and, 2ndly, when a merchant-ship displays her colours, how is a ship of war to verify the nationality claimed, should her honesty be suspected?

I have to state to your Excellency, that it appears to Her Majesty's Government that the first question has not, in effect, received a sufficient answer from Count Walewski. His Excellency, in his despatch to the Duke of Malakoff, seems to assume that a merchant-vessel will always show her colours on being summoned so to do by a ship of war; an assumption upon which no reliance can be placed in practice.

Her Majesty's Government are of opinion that if a merchant-vessel, after being summoned and warned in the usual manner by a man-of-war (first hoisting her colours and firing a blank cartridge, and next by firing a shot over or a-head of the chase), still omits either to show her colours, or to heave-to, this circumstance would be of itself, as a general rule, of so suspicious an aspect as to justify the man-of-war, after every other measure had been exhausted, in resorting to force, as by firing shot at the chase in the last resort.

In case of the chase heaving-to, her merely not showing any colours would, of course, be immaterial, except as authorizing her being boarded by the cruiser.

With respect to the second question, Her Majesty's Government fear, that if the exhibition of papers alone is to be conclusive in every case without exception, and is to preclude absolutely a single question, or the most obvious and cursory inspection, as suggested by Count Walewski, false papers will be as freely and successfully resorted to as they are at present by slavers. Her Majesty's Government assume that where the flag of one nation and the papers of another are exhibited, this will authorize detention; and they see no reason why, in certain other cases, which may be easily conceived, some latitude should not be conceded, even if the papers, although they may show the same nationality as the flag, are grossly and obviously fraudulent or imperfect, as, for instance, purporting to be for a destination quite contrary to that of the actual voyage, or being apparently for a laden vessel with cargo, when the vessel has no cargo but slaves, and so forth.

Her Majesty's Government do not mean that irregularity of papers alone should justify capture, but they conceive that, on the other hand, the mere production of papers should not be held absolutely conclusive.

Her Majesty's Government assume that in the event of the arrangement suggested being carried out, lists and copies, carefully corrected from time to time, of the legal "ship's papers," would be transmitted between the Powers entering into the proposed arrangement.

Her Majesty's Government would further suggest that naval officers should be required to enter in their log-books before boarding vessels, a full record of the grounds of suspicion upon which they act.

Her Majesty's Government are also of opinion that a rule should be laid down with regard to the manner in which the question of the indemnity for the detention of a vessel should be decided, and that the best mode of settling this point would be by submitting such cases to a Mixed Commission or Board, composed of two arbitrators and an umpire, empowered to decide finally, and without appeal, after hearing one counsel or agent for each Government, and to cause payment to be made forthwith.

I have to instruct your Excellency to communicate to Count Walewski the above views and suggestions of Her Majesty's Government, with regard to the

proposal contained in his Excellency's despatch to the Duke of Malakoff, and to request him to favour Her Majesty's Government at his earliest convenience with the observations which the French Government may have to offer in reply.

I am, &c.
(Signed) MALMESBURY.

Inclosure 3 in No. 15.

Earl Cowley to the Earl of Malmesbury.

(Extract.)

Paris, December 13, 1858.

COUNT WALEWSKI has placed in my hands the *note verbale* of which the inclosed is a copy, as the answer of the Imperial Government to the Memorandum which, under your Lordship's directions, I communicated to him some time back, containing the observations of Her Majesty's Government upon the French proposal for regulating the question of the right of visit.

Your Lordship will see that the Imperial Government is unwilling to adopt the modifications to their proposal suggested by Her Majesty's Government.

I regret that I was prevented reading this document in Count Walewski's presence, for had I known its contents before I left his Excellency I should certainly have observed to him that the well-known intention of Her Majesty's Government, in desiring to regulate the right of visit, was not so much the suppression of piracy, which the French *note verbale* justly described to be all but annihilated, as the eradication of the Slave Trade. It was for this latter purpose that they sought, not as the *note verbale* seemed to indicate, concessions to the British flag, but a general understanding among the maritime Powers of the world, for the purpose of regulating the manner of verifying a ship's nationality, and preventing the abuse of the flag of any nation to cover a traffic which all nations repudiated.

I have already remarked to Count Walewski, in former conversations, that there would be no risk of a merchantman refusing to show her colours when called upon to do so by a ship of war, if the obligation of so doing was established by some international act.

I should have repeated this remark on the present occasion, and I should have added that I knew nothing more likely to encourage both piracy and the Slave Trade, under an assumed French flag, than the knowledge that the French Government did not admit that the display of a merchantman's colours at the demand of a ship of war was compulsory.

Although it is still my intention to make these remarks to Count Walewski on the first favourable opportunity, I am desirous that your Lordship should at once know that I should not have left a document of the nature of that inclosed without an answer, had I perused it in Count Walewski's presence.

Inclosure 4 in No. 15.

Memorandum.

LES observations présentées dans les Memorandums du Foreign Office et de l'Amirauté paraissent, après un examen attentif, tendre à modifier profondément le mode d'enquête concernant la nationalité des navires tel que le concevait le Gouvernement de l'Empereur.

Ces Memorandums demandent, en premier lieu, qu'on détermine nettement si le capitaine d'un navire de guerre a droit de tirer sur un bâtiment marchand de manière à l'atteindre quand celui-ci, après avoir été semoncé par les deux coups d'usage, persiste à ne pas hisser son pavillon. On croit qu'il serait à la fois difficile et dangereux de formuler une réponse précise à une question semblable. En effet la vérification de la nationalité ne pouvant, en temps de paix, avoir d'autre but que la repression de la piraterie, il est évident qu'on ne doit y recourir qu'en présence de soupçons bien fondés et que toute violence ou voie de fait est interdite, tant qu'il n'y a pas présomption acquise de piraterie. Or, un bâtiment de commerce qui

refuse de hisser son pavillon devient, sans doute, par là justement suspect ; mais sans qu'on soit autorisé cependant à conclure de ce seul refus que ce peut être un pirate. On ne saurait donc, en pareil cas, que s'en rapporter à la prudence des commandants, qui devront prendre conseil des circonstances, en n'oubliant jamais qu'en temps de paix l'usage de la force n'est permis qu'à la dernière extrémité, et en se rappelant qu'ils sont responsables de leurs procédés et de leurs conséquences.

C'est dans le même sens qu'on répondra à la question analogue posée par les Memorandums Anglais pour l'hypothèse où un navire qu'on veut faire raisonner en envoyant une embarcation le long du bord, ne tiendrait nul compte de l'avertissement préalable et continuerait obstinément sa route. Le droit d'enquête du pavillon n'est pas, en temps de paix, un droit parfait emportant avec lui la faculté de contraindre ; il ne doit dès-lors pouvoir être exercé que sous la condition d'une très grande responsabilité. Il faut que les capitaines des navires de guerre qui en usent, sachent qu'ils agissent toujours à leurs risques et périls, et n'aient pas à invoquer, pour justifier leur conduite, d'autre principe que ce principe du droit des gens en vertu duquel la marine militaire peut, sur le soupçon légitime de piraterie, vérifier la nationalité des navires marchands.

Quant à la latitude que les Memorandums Anglais désireraient qu'on laissât aux commandants de pouvoir, dans certaines circonstances, faire procéder à l'enquête du pavillon autrement que par l'exhibition du rôle d'équipage, et par celle des autres pièces destinées à faire preuve de la nationalité, on ne croit pas qu'elle puisse être concédée. Les instructions du Gouvernement Britannique n'ont certainement jamais manqué de recommander à ses croiseurs toute la réserve et la modération possibles en matière de vérification de pavillon. D'où vient cependant qu'il s'est produit à cette occasion tant de faits qui ont obligé le Gouvernement Français à réclamer auprès du Gouvernement de la Reine ? C'est que les commandants restant jusqu'ici juges des preuves qu'ils avaient à réclamer d'un bâtiment marchand à l'appui de sa nationalité apparente, ont cru trop souvent pouvoir formuler des exigences qui transformaient leur vérification en acte de visite. Or, puisqu'on a pour but en cherchant à se mettre d'accord sur une mode déterminée d'enquête de prévenir ces regrettables méprises de la part des officiers qui procèdent à la vérification, c'est surtout en ce qui regarde la preuve de la nationalité qu'il importe de tracer une règle dont ils ne puissent pas s'écarter au gré de leurs appréciations personnelles. Aussi, le Gouvernement de l'Empereur conserve-t-il la conviction qu'on ne saurait à cet égard aller plus loin qu'il ne l'a suggéré dans sa note antérieure.

Quelle est d'ailleurs, en résumé, la raison qui légitime le maintien de la faculté d'enquête de pavillon ; c'est le besoin d'assurer la police des mers au point de vue de la piraterie. Or, la piraterie a si complètement disparu sur les principales mers du globe que la faculté d'enquête, si elle est renfermée dans ses véritables limites, ne saurait désormais trouver que très rarement l'occasion de s'exercer.

Paris, le 10 Décembre, 1858.

(Translation.)

THE observations presented in the Memoranda of the Foreign Office and of the Admiralty appear, after an attentive examination, to tend to modify materially the mode of inquiry into the nationality of vessels, as conceived by the Government of the Emperor.

These Memoranda demand, in the first place, that it should be absolutely determined whether the captain of a man-of-war has the right to fire on a merchant-vessel so as to strike her, when the latter, after having been summoned by the two customary shots, persists in refusing to hoist her flag. It is thought that it would be both difficult and dangerous to frame a direct answer to such a question. In fact, it being impossible that in time of peace the verification of nationality should have any other object than the suppression of piracy, it is evident that it must only be resorted to in the face of well-founded suspicions, and that all violence or coercion is forbidden, so long as there is no actual presumption of piracy. Now, a merchant-vessel that refuses to hoist her flag becomes beyond a doubt thereby open to just suspicion ; but without that refusal by itself authorising the conclusion that she may be a pirate. In such case, then, one could but trust to the prudence of Commanders, who must consult circumstances, never forgetting that in time of

peace the employment of force is only allowed in the most extreme cases, and recollecting that they are responsible for their proceedings and their consequences.

A similar answer will be given to the analogous question put by the English Memoranda for the supposition of the case of a ship which it is desirable to communicate with by sending a boat alongside, taking no notice of the preliminary warning, and obstinately continuing her course. The right of verifying the colours of a merchant-vessel is not, in time of peace, a perfect right, carrying with it the power of compulsion. It must, then, only be exercised on condition of great responsibility being incurred. The captains of men-of-war who exercise this right must know that in doing so they are always acting at their own risk and peril, and have not any other principle to invoke in justification of their conduct than that of the right of nations, in virtue of which ships of war can, on legitimate suspicion of piracy, verify the nationality of merchant-vessels.

With regard to the latitude which the English Memoranda would wish to be left to Commanders, of having the right, in certain cases, to proceed to verify the nationality of a vessel otherwise than by the exhibition of the muster-roll, and of the other papers meant to prove her nationality, it is thought impossible that it should be conceded. The instructions of the British Government have never failed to recommend to their cruisers all the reserve and moderation possible in the question of the verification of colours. Whence comes it, however, in the exercise of this duty, so many circumstances have accrued which have obliged the French Government to claim reparation from the Government of the Queen? It is because Commanders having been hitherto the judges of the proofs which they might claim from a merchant-vessel in support of her apparent nationality, have too often thought that they might frame requisitions which transformed their verification into an act of visit. Now, since the object, in attempting to agree upon a fixed mode of inquiry, is to prevent those lamentable mistakes on the part of the officers who proceed to verify a ship's nationality, it is especially in that which regards the proof of nationality that it is important to draw a rule from which they cannot deviate in accordance with their mere personal views. Moreover, the Government of the Emperor are convinced that in this respect it would be impossible to go further than their suggestions in their previous note.

Besides, to sum up, what is it which legalises the maintenance of the power of verifying a ship's nationality? It is the necessity of insuring the police of the seas with respect to piracy. Now, piracy has so completely disappeared on the principal seas of the globe, that the right of verifying a ship's colours, if confined to its true limits, could henceforth but very rarely be exercised.

Paris, December 10, 1858.

Inclosure 5 in No. 15.

Earl Cowley to the Earl of Malmesbury.

My Lord,

Paris, December 15, 1858.

WITH reference to my despatch of the 13th instant, I have the honour to state that since writing it I have had an opportunity of speaking to Count Walewski on the subject of the *note verbale* relating to the right of visit, a copy of which was inclosed therein.

I told his Excellency, as I informed your Lordship I should do, that the object of Her Majesty's Government in desiring to regulate the question of the right of visit, was to prevent the abuse of the flag of any nation to cover the Slave Trade, and I added that I could not understand the difficulties raised by the French Government to carry out the provisions which they had themselves suggested, with a view of obtaining that desirable end.

Count Walewski replied that it was one thing to admit a right, and another thing to say how that right was to be exercised. The French Government did not deny that a suspected ship, but a suspected ship only, might be obliged to show her colours by a ship of war; but the manner in which the obligation was to be enforced must, his Excellency argued, be left to the discretion and responsibility of the officer commanding the ship of war. It would be impossible for the French Government to admit in general terms that a merchant-ship refusing to show her colours might be fired into. It would be giving a power to naval officers that

might be abused, and might, consequently, lead to the most deplorable consequences.

I have, &c.
(Signed) COWLEY.

Inclosure 6 in No. 15.

The Earl of Malmesbury to Earl Cowley.

My Lord,

Foreign Office, December 24, 1858.

I HAVE received your Excellency's despatch of the 13th instant, inclosing a copy of a *note verbale* which was placed in your hands by Count Walewski as the answer of the Imperial Government to the communication of Her Majesty's Government on the question of the right of visit.

I have also received your Excellency's further despatch of the 15th instant, reporting your conversation with Count Walewski on this subject.

It appears from the French note, and from the language of the French Minister, that the Imperial Government are not prepared to modify their proposals in accordance with the suggestions of Her Majesty's Government; and the effect of this decision, if persevered in, must necessarily be to render almost nugatory any attempt to secure a just and effectual police of the seas.

The arguments, indeed, now used by the French Government tend to show that, in their opinion, such police is uncalled for. They allege that piracy is extinct; that therefore, in fact, no occasion exists for verifying the flag of a merchant-ship; and they desire to throw upon naval officers the whole responsibility of executing orders given to them by their respective Governments.

It must surely be impossible for the French Government to have come to this conclusion without overlooking the worst form of piracy which is now openly carried on to an unlimited extent by traders in negro slaves. It must be wholly impossible for France, as one of the first civilized nations of the world, to view otherwise than with horror the revolting scenes to which that Traffic leads; but if facts have not hitherto been brought to the knowledge of the French Government, I have to instruct your Excellency to communicate to Count Walewski the accompanying copies of a letter from Commodore Wise, and of a note which I have felt it to be my imperative duty to address to the United States Minister at this Court, proving, beyond doubt, the piratical use of the American flag, and its prostitution to the foulest purposes.

I said to Mr. Dallas, as your Excellency will say to Count Walewski, that the circumstances detailed by Commodore Wise disclose facts calculated to move the most prejudiced feelings in regard to the question of the right of visit. The enlightened mind of the Emperor of the French cannot fail to see the evils thus engendered by the abuse of a legitimate flag; and I am willing to believe that His Majesty will not refuse to cause this question to be reconsidered, with a view to framing instructions which may serve not only for the guidance of naval officers of all countries in effectually verifying merchant-ships, but which may relieve those officers from a responsibility which ought not properly to fall on them, and which it would be ungenerous in any Government to throw upon their servants on occasions when they strictly carry out the orders which they have received.

Her Majesty's Government will await the reply which your Excellency may receive from the French Government before they make any further communication to other Governments on this subject.

Your Excellency will read this despatch to Count Walewski, and place a copy of it in his Excellency's hands.

I am, &c.
(Signed) MALMESBURY

Inclosure 7 in No. 15.

The Earl of Malmesbury to Mr. Dallas.

Sir,

Foreign Office, December 14, 1858.

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 endeavouring 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 honour 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 honour 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 vigour and determination, and side by side with Great Britain, in vindication of the imperative rights of humanity.

I am, &c.

(Signed) MALMESBURY.

Inclosure 8 in No. 15.

Commodore Wise to the Secretary to the Admiralty.

(Extract.)

"Vesuvius," off Lagos, October 28, 1858.

IN my letter of the 26th of August last, I had the honour 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 a 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 ongo, 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, half-way 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 Soule," captured by Her Majesty's ship "Viper," on the 11th October, when about to ship at Banda Point, some interesting information was obtained, the chief of which was, that the "Rufus Soule" 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 Soule" 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; for, 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 twenty-three vessels said to have escaped, eleven were repeatedly visited by Her Majesty's cruisers, but though known to be slavers they were necessarily left unmolested, through their being *bonâ 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 trans-Atlantic 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.

Inclosure 9 in No. 15.

INFORMATION of Full Slavers escaped in 1857, and to September 1858.
1857.

Place where shipped.	Name of Slaver.	No. of Slaves.	Remarks.
South Coast.. ..	Brigantine, "W. D. Adams" ..	600	Repeatedly visited by Her Majesty's cruizers.
Ditto	Brig, "R. B. Lawton" ..	600	
Ditto	Brig, "Nancy" ..	600	Ditto.
Snake's Head ..	Brig "Putnam" ..	600	
Ditto	Barque, "Pays" ..	700	Taken in Cuba.
Praya dos Pescadores ..	Brigantine, "Crimea" ..	700	Repeatedly visited by Her Majesty's cruizers.
Ditto	Brig, "Telegraph" ..	600	Ditto.
Londano	Barque, "Petrel" ..	650	Taken in Cuba.
Killoo	Barque, "Spirit of '76" ..	700	Ditto.
Loango	A Spanish brig, qy. the "Frank"	550	
Aghwey	Barque, "Vesta" ..	450	Repeatedly visited by Her Majesty's cruizers.
Whydah	Schooner "Jas. Buchanan" ..	300	Ditto.
1858.			
Northward of Mayumba	Schooner, "Merchant" ..	600	In January visited by Her Majesty's ship "Conflict."
Longabonda.. ..	Brig (Spanish) name unknown, Señor Musquito, master	800	Escaped in March.
Banda Point	Brig, "Telegraph" ..	700	Escaped in June.
Killongo	Brigantine, "Wm. Montague" ..	500	In June two vessels shipped the number stated, supposed to be the vessels named.
Ditto	Schooner, "Blooming Youth" ..	400	
Ditto	Ship, "Trovador" ..	1,160	Escaped in July.
Ditto	Brig, "Putnam" ..	700	Captured by United States' vessel of war "Dolphin," off Cuba.
Praya dos Pescadores ..	Brig, "Charlotte" ..	550	Repeatedly visited by Her Majesty's cruizers. Escaped in July.
Not known, said to be north of the Congo	Barque, "Venus" ..	800	Repeatedly visited by Her Majesty's cruizers. Escaped in September.
South Coast.. ..	Brigantine, "Ellen" ..	350	Boarded repeatedly, and by Her Majesty's ship "Medusa," with slaves on board, in September.
In the Congo, cruising in the offing	Yacht, "Wanderer" ..	Deck laid for 600	Repeatedly visited by Her Majesty's cruizers.

ABSTRACT.

	Slavers.	Slaves.
Captured in the year 1857, and to the latest dates, by Her Majesty's cruizers and Portuguese cruizers, 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
Total escaped, and cargoes landed in Cuba, in 1857, and to September 1858	19	11,460*

* Loss on middle passage to be deducted.

(Signed) CHAS. WISE,
Commodore and Senior Officer, West Coast of Africa.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, February 11, 1859.

WITH reference to my despatch of the 14th ultimo, I inclose, for your Lordship's information, copies of further communications which have passed between Her Majesty's Government and the Government of the Emperor of the French on the question of the right of visit. Your Lordship will learn from these papers how the matters in negotiation now stand.

I am, &c.

(Signed) MALMESBURY.

 Inclosure 1 in No. 16.
*Count Walewski to the Duke of Malakoff.**

M. le Maréchal,

Paris, le 4 Février, 1859.

J'AI eu l'honneur de vous transmettre, le 4 Septembre dernier, une note dans laquelle j'avais résumé les bases de l'accord qui nous paraissait pouvoir s'établir entre toutes les Puissances maritimes en matière d'enquête du pavillon. La communication que vous avez faite de cette pièce au Cabinet Anglais, ainsi que je vous en avez prié, a amené entre Lord Cowley et moi un échange successif d'observations, desquelles il résulte que, d'une part, le Gouvernement de Sa Majesté Britannique ne considère pas les propositions contenues dans ma note comme étant de nature à établir un système efficace de police maritime, et que, de l'autre, le Gouvernement de l'Empereur ne croit pas possible d'adhérer aux règles qu'on voudrait leur substituer. Dans cet état de choses, le Cabinet de Londres, tout en persistant à croire que nous finirons par nous rallier à sa manière de voir, a pensé que les deux Gouvernements pouvaient toujours, pour le moment, munir leurs officiers de marine respectifs d'instructions strictement conformes aux règles posées dans ma note du 4 Septembre, et Lord Cowley m'a adressé une proposition en ce sens. Nous n'avons point d'objection à accueillir cette ouverture dans les termes où elle nous est faite, c'est-à-dire, comme ne devant constituer qu'un état de choses provisoire. Vous savez, en effet, M. le Maréchal, que dans la pensée du Gouvernement de l'Empereur, la question d'enquête du pavillon ne saurait être résolue que par une entente entre la France, la Grande Bretagne, et les Etats Unis, et c'est sous cette réserve que nous sommes prêts à adresser, dès à présent, aux commandants de nos bâtiments de guerre des instructions conçues dans le sens de ma note du 4 Septembre. Je vous prie d'en informer Lord Malmesbury en lui demandant, en même temps, de vouloir bien vous communiquer celles que le Cabinet de la Reine fera préparer de son côté pour les officiers de la Marine Britannique. J'attendrai d'en avoir connaissance pour prier M. le Ministre de la Marine de rédiger les instructions destinées aux Commandants Français, afin qu'il y ait ainsi une parfaite identité entre les uns et les autres.

Agréé, &c.

(Signé) A. WALEWSKI.

(Translation.)

M. le Maréchal,

Paris, February 4, 1859.

I HAD the honour to transmit to you, on the 4th of September last, a note in which I had summed up the bases of the agreement which it seems to us might be established between all the maritime Powers on the question of the verification of a ship's colours. Your communication, in compliance with my request, of this paper to the English Cabinet, has given rise to a successive exchange of observations between Lord Cowley and myself, the result of which is that the Government of Her Britannic Majesty, on the one hand, do not consider the proposals contained in my note as being of a nature to establish an efficacious system of maritime police, and, on the other, the Government of the Emperor does not think it possible to abide by the rules proposed to be substituted for them. In this state of things, the Cabinet of London, while persisting in the belief that we shall end by coming round to their views, has thought that the two Governments could, at any rate for the time being, furnish their respective naval officers with instructions strictly

* Communicated to the Earl of Malmesbury by the Duke of Malakoff, February 7.

conformable to the rules laid down in my note of September 4, and Lord Cowley has addressed a proposition to me to this effect. We have no objection to receive this overture in the terms in which it is made to us; that is to say, as merely constituting a provisional state of things. In fact you know, M. le Maréchal, that the Government of the Emperor thinks that the question of the verification of a ship's colours can only be solved by an agreement between France, Great Britain, and the United States; and it is with this reserve that we are ready to address at once to the Commanders of our men-of-war instructions conceived in the sense of my note of the 4th of September. I beg you to inform Lord Malmesbury of this, asking him at the same time to be kind enough to communicate to you the instructions which the Government of the Queen will cause to be prepared for the officers of the British navy. I shall wait until I am acquainted with them to beg the Minister of Marine to revise the instructions intended to be issued to the French commanders, in order that there may be thus a perfect identity between both.

Receive, &c.
(Signed) A. WALEWSKI.

Inclosure 2 in No. 16.

The Earl of Malmesbury to the Duke of Malakoff.

M. le Maréchal,

Foreign Office, February 9, 1859.

IN compliance with the request contained in the despatch addressed to your Excellency by Count Walewski on the 4th instant, which your Excellency has been good enough to communicate to me, I now have the honour to transmit to you a copy of the instructions which Her Majesty's Government propose to give to the commanders of British cruisers for their present guidance, in regard to the visit of vessels navigating under the French flag.

These instructions, your Excellency will perceive, have been drawn up in strict conformity with the views of the Imperial Government, on the question of the right of visit, as laid down in Count Walewski's despatch of the 4th of September last; and I beg leave to request that, in transmitting the proposed draft of instructions to your Government, your Excellency will at the same time request that Her Majesty's Government may be furnished with a copy of the instructions which it is proposed to give to the commanders of French cruisers.

I am, &c.
(Signed) MALMESBURY.

Inclosure 3 in No. 16.

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 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.

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 colours of a vessel being *primâ 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 colours, 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 colours 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 through a speaking-trumpet or otherwise, but without obliging her to alter her course.

Whenever, however, the presumption of nationality resulting from the colours 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 colours 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 the 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 circumstances 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 colours 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 reasons 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.

No. 17.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, February 11, 1859.

I TRANSMIT to your Lordship herewith a copy of a despatch from Count Walewski, which has been communicated to me by the Duke of Malakoff, by which your Lordship will perceive that the French Government is not disposed to acquiesce, without previous concert with the Government of the United States, in the principle that Her Majesty's Government would propose should be adopted by maritime nations, viz., that a ship of war has the right to compel a merchant-vessel, by force if necessary, to hoist the colours of the nation to which she claims

to belong. And the French Minister suggests that a joint understanding should be come to on this subject between the three Governments.

I have accordingly to instruct your Lordship to bring this matter under the consideration of General Cass, and you will strongly urge the Government of the United States to acquiesce in the views of Her Majesty's Government upon this point.

I am, &c.
(Signed) MALMESBURY.

Inclosure in No. 17.

*Count Walewski to the Duke of Malakoff.**

M. le Maréchal,

Paris, le 8 Février, 1859.

LE Gouvernement Anglais nous a proposé de convenir qu'en principe un navire de guerre a le droit de faire hisser le pavillon à tout bâtiment marchand qu'il rencontre en pleine mer, et il m'a fait exprimer le vœu que nous nous mettions d'accord avec lui à ce sujet. Le Gouvernement de l'Empereur, après avoir examiné cette proposition avec toute l'attention qu'elle méritait, a pensé que l'adoption d'une règle commune en cette matière avait trop d'importance pour qu'il ne fût pas essentiel de s'en entendre aussi au préalable avec les Etats Unis. Il croit donc que le Gouvernement de la Reine atteindrait plus complètement le but qu'il se propose en saisissant le Cabinet de Washington de la question en même temps que nous. Les trois Puissances arrêteraient alors de concert une règle de conduite que leur unanimité ferait d'autant mieux accepter comme principe permanent de droit maritime, et dont elles fixeraient la portée de manière à empêcher dans l'application les divergences que le Gouvernement Anglais a évidemment à cœur de prévenir. Je vous prie, M. le Maréchal, de faire part de cette suggestion à Lord Malmesbury, en réponse au désir que Lord Cowley avait été chargé de m'exprimer, et de m'informer de la suite que le Principal Secrétaire d'Etat de Sa Majesté Britannique jugera utile de lui donner.

Agréez, &c.
(Signé) A. WALEWSKI.

(Translation.)

M. le Maréchal,

Paris, February 8, 1859.

THE English Government have proposed that we should agree, that in principle, a man-of-war has the right to compel every merchant-vessel that she falls in with on the high seas to hoist her colours, and have caused their wish to be expressed to me that we should come to an agreement with them upon this subject. The Government of the Emperor, after having examined this question with all the attention which it merited, thought that the adoption of a common rule in this matter was of too great importance to be decided upon without a previous understanding on the subject with the United States. They believe, therefore, that Her Majesty's Government would more completely attain the end which they have in view, by calling the attention of the Government of Washington to the question at the same time with ourselves. The three Powers would then in concert fix upon a rule of conduct, which their unanimity would cause to be all the more accepted as a permanent principle of maritime right, and the bearing of which they would settle in such a manner as to prevent in its application those divergencies which the English Government has evidently at heart to obviate.

I request, M. le Maréchal, that you will communicate this suggestion to Lord Malmesbury, in reply to the wish which Lord Cowley had been charged to express to me, and to inform me how Her Britannic Majesty's Principal Secretary of State may judge it useful to carry it out.

Accept, &c.
(Signed) A. WALEWSKI.

* Communicated to the Earl of Malmesbury by the Duke of Malakoff, February 10.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, February 15, 1859.

I INCLOSE a copy of the "Times" newspaper of this day, which contains a report of yesterday's debate, in the House of Lords, on the question of the right of search.

I think it useful to send this paper to your Lordship, as giving a very accurate report of my speech, which will, doubtless, attract the attention of General Cass.

I have only to observe, that the reporter has misstated that part of it in which I am made to agree in a suggestion of the United States' Government, that ten steam-vessels, with two guns each, should be substituted for eighty guns in sailing-frigates.

What I said was, that if they sent ten steam-vessels, with two guns each, they would be more useful than two sailing-ships of forty guns each.

I am, &c.

(Signed) MALMESBURY.

Lord Napier to the Earl of Malmesbury.—(Received February 21.)

(Extract.)

Washington, February 7, 1859.

I HAVE the honour to inclose herewith copy of a letter, under date of the 3rd instant, which I have addressed to the Secretary of State, imparting to him the Memorandum submitted to Her Majesty's Government by that of France, in reference to the verification of the nationality of merchant-vessels at sea.

Although not distinctly instructed to address the Government of the United States on this subject, in writing, I have preferred to do so in order to procure, for the question under discussion, a more formal consideration before the Cabinet than is often accorded to verbal communications.

I find that, some time since, Count de Sartiges had made overtures, in this matter, to the Government of the United States, I conceive upwards of a month ago; but what the date, or what the nature of those proposals, was, I am not exactly informed, for I only know anything of them by some accidental expressions let fall by the Secretary of State and Mr. Appleton.

Inclosure in No. 19.

Lord Napier to General Cass.

Sir,

Washington, February 3, 1859.

IN the month of June last I had the honour 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 colours, 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 in this matter should be given to their cruizers by all 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, &c.
(Signed) NAPIER.

No. 20.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, February 28, 1859.

WITH reference to your Lordship's despatch of the 7th instant, I have to acquaint your Lordship that I approve the note which you addressed to General Cass, inviting the Government of the United States to acquiesce in the proposals of the French Government for settling the question of the right of visit, and to give orders to the commanders of their naval forces in accordance therewith.

I am, &c.
(Signed) MALMESBURY.

No. 21.

Lord Napier to the Earl of Malmesbury.--(Received February 28.)

My Lord,

Washington, February 7, 1859.

I AVAILED myself of an opportunity, on the morning of the 5th instant, to engage General Cass in conversation on the French proposals for the verification of the nationality of merchant-vessels at sea.

I submitted to him that the right of the man-of-war to enforce the exhibition of colours on the part of a merchant-vessel was very imperfectly avowed in the regulations contemplated by the Imperial Cabinet for the guidance of their officers. A blank cartridge was to be discharged, a shot was to be levelled in such a manner as not to strike the obnoxious vessel, but after these preliminary menaces, no authority was given to use measures actually compulsory to attain the object in view. I said, in conformity with the sense of your Lordship's despatch of the 14th ultimo, that if the Government of the United States were prepared to go further than that of France, Her Majesty's Government would certainly accede, for we had no tenderness on this point in regard to our traders. We allowed the absolute obligation of every merchant-vessel to show her colours to a man-of-war.

General Cass did not recognize the great importance of the exhibition of colours, as they gave no absolute assurance of nationality; they might be fraudulently assumed: yet he seemed to lean to the theory that, by general international law, or the sanctioned usage of the sea, a merchant-vessel was bound to display her flag to a ship of war.

He asked me whether I thought the French proposals still left the whole responsibility of action with the boarding officer. I said I conceived they did. General Cass observed that he did not think that, under the French proposals, much would be gained; for at present, on his responsibility, the boarding officer, on well-founded suspicion, might do all that the projected French regulations would enable him to effect. I remarked that Her Majesty's Government attached much importance to the issue of identical instructions by all the Maritime Powers to their respective officers.

The Secretary of State eventually reserved the whole subject for the consideration of the President and Cabinet.

I have, &c.
(Signed) NAPIER.

Lord Napier to the Earl of Malmesbury.—(Received February 25.)

My Lord, *Washington, February 10, 1859.*
 GENERAL CASS sent for me this morning, and informed me that before making an official reply to the overtures of Her Majesty's Government for the verification of the nationality of merchant-vessels at sea, he must await the arrival of letters from the Minister of the United States at Paris with reference to previous correspondence which had taken place on the same subject. Her Majesty's Government, he said, would appreciate the motives of the delay, which did not proceed from any indifference to their wishes.

The Government of the United States desired to give their best consideration to the subject, with the object of enabling the Government of Great Britain to carry out their views, without offending any other interest or sentiment involved in this delicate question.

General Cass did not, however, hold out to me any distinct assurance that the provisions of the French Memorandum would be adopted by the Government of the United States as the basis of instructions of their naval officers.

He stated incidentally, that although the Government of the United States could not, perhaps, lay down in principle that a man-of-war had an absolute right to compel a merchant-vessel to display her flag, he believed that in case of refusal on the part of an American vessel to do so, on proper summons, the British ship of war would not be called to account for any measures it might take to enforce the exhibition of colours.

I have, &c.
 (Signed) NAPIER.

Lord Napier to the Earl of Malmesbury.—(Received March 22.)

My Lord, *Washington, March 2, 1859.*

IN the course of my conversation with General Cass yesterday forenoon, he alluded to the debate in the House of Lords, on the 14th of February, in which your Lordship is reported to have remarked that the Governments of England and France had agreed upon a certain code of instructions to be issued to their respective commanders at sea, with a view to enforce the exhibition of colours by merchant-vessels, as well as for the purpose of ascertaining the right of the merchant-vessel to wear the flag displayed, and that this code had been submitted to the consideration of the Government of the United States.

The Secretary of State observed that from the communications which had passed between the Governments of France and the United States on this subject, he had not conceived that the French memorandum transmitted to me in your Lordship's despatch of the 11th ultimo, and previously known to the Cabinet of Washington, had been definitively adopted as the basis of common instructions by France and Great Britain separately: he had understood that the adoption of this basis was conditional, on the part of France, on the assent of the United States; and he had written to Paris under that impression, to obtain further explanations of the sense of the memorandum referred to.

General Cass requested me to inform your Lordship that the delay which occurred in replying to your Lordship's overtures was caused by this reference to Paris, and was not prompted by any indifference to the wishes of Her Majesty's Government; he also spoke favourably of the prospect of coming to some harmonious understanding on this subject.

The right of a vessel of war to compel a merchant-vessel to display colours was then adverted to. Such a right was not distinctly recognized by General Cass, but he went so far as to say that the simple fact of refusing to exhibit colours was so high a ground of suspicion that it might seem to sanction boarding and further inquiry, and that even if such an inquiry were not justified by the result, the Government of the United States would not demand redress for an act of visit executed under those circumstances.

I have, &c.
 (Signed) NAPIER.

Lord Napier to the Earl of Malmesbury.—(Received March 22.)

(Extract.)

Washington, March 6, 1859.

IN conformity with your Lordship's instructions, I sought an interview, yesterday, with General Cass, when I read to him your Lordship's despatch of the 11th ultimo, by which I am desired strongly to urge upon the Government of the United States the expediency of formally recognising the right of the naval officer to compel a merchant-vessel, by force, if necessary, to hoist the colours of the nation to which she claims to belong, explaining, at the same time, that the assent of the French Government to this principle seemed to be conditional on that of the United States.

General Cass replied, very much as he had done before, that he felt great difficulty in acknowledging, *à priori*, the right of a vessel of war to fire into a merchant-vessel for the purpose of enforcing the exhibition of a flag; but still, in his own opinion, for he had no official resolution to deliver, an American vessel which should refuse to display her colours, would be, in a manner, "denationalised;" and that the Government of the United States would not be hasty to resent the measures of restraint or compulsion which might be adopted by a foreign officer in ascertaining her nationality. Indeed, he thought that previous intimation might be made to sea-going vessels, that in case of a stubborn refusal to show a flag, they would not be entitled to the protection of their Government.

Such, I believe, was the correct sense of the remarks offered by the Secretary of State, whose language in these matters is, however, always extremely guarded; and who constantly marks that he is giving utterance to impressions prompted by the pending discussion, and not communicating the deliberate definitive views of the Cabinet over which he presides.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, March 25, 1859.

WITH reference to my despatch of the 11th ultimo, I inclose for your Lordship's information, copies of further communications which have passed between the Duke of Malakoff and myself, relative to the instructions to be issued by the French and English Governments respectively for the guidance of their officers in regard to the question of the right of visit.

I am, &c.

(Signed) MALMESBURY.

Inclosure 1 in No. 25.

*Memorandum communicated to the Earl of Malmesbury by the Duke of Malakoff,
February 25, 1859.*

Réserves :

1. LE paragraphe 3 de notre note dit que si un bâtiment de commerce refuse de hisser son pavillon, "il est admis qu'on puisse le semoncer par un premier coup de canon, &c." Ce paragraphe, devenu le 4^{me} des instructions Anglaises, y a été traduit de la sorte : "Should she refuse to do so, it is admitted by both countries that she may be summoned to do so, first, &c." Or, le mot "semoncer" est un terme de marine Français dont la signification exacte est celle "d'avertir à haute voix," tandis que le mot "summon," par lequel il a été traduit, et qui semble le rendre littéralement, emporte avec lui l'idée de sommation, et, par suite, de contrainte. Afin de faire disparaître le sens trop impératif qui s'attacherait à cette expression, M. le Ministre de la Marine a cru devoir supprimer le mot "semoncer" dans le projet Français d'instructions, et rédiger de la manière suivante le paragraphe où il eût figuré : "S'il néglige de le faire, les deux Gouvernements admettent qu'on peut lui donner un premier avertissement en tirant 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." C'est donc l'expression exacte-

ment correspondante à celle de "donner un avertissement," que nous désirons voir substituer aussi à celle de "summon," dans le texte Anglais.

2. Le paragraphe 10 du projet de l'Amirauté porte "qu'en toute hypothèse, il est bien entendu qu'un bâtiment de guerre qui décide à aborder un navire de commerce étranger, le fait à ses risques et périls, &c." M. le Ministre de la Marine exprime le vœu qu'il soit dit, pour donner plus de précision à la rédaction, "en toute hypothèse, il est bien entendu que le capitaine d'un bâtiment de guerre," &c.

Instructions proposed to be issued to the Commanders of French Ships of War.

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 prime abord 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 doit donc également hisser son pavillon de nation.

4. S'il néglige de le faire, les deux Gouvernements admettent qu'on peut lui donner un premier avertissement en tirant 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 du droit de le 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 des 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, sont absolument interdites.

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 aura été effectuée, et offrir de noter sur les papiers du bord le fait, les circonstances de la vérification, et les raisons qui l'y auront déterminé.

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 son acte.

11. Le commandeur d'un bâtiment de guerre 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 motifs qui ont provoqué cette constatation, sera officiellement donnée au

Gouvernement auquel appartiendra 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, ou 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 aient pour but, de part et d'autre, de prévenir toute mésintelligence entre les Gouvernements de la France et de la Grande Bretagne, il est bien entendu qu'elles devront vous diriger dans vos rapports avec les marines de toutes les nations avec lesquelles le Gouvernement de l'Empereur est en paix.

(Translation.)

1. THE 3rd paragraph of our note says that when a merchantman refuses to hoist her flag, "il est admis qu'on puisse le semoncer par un premier coup de canon," &c. This paragraph, which is the 4th in the English instructions, has been translated as follows: "Should she refuse to do so, it is admitted by both countries that she may be summoned to do so first," &c. Now the word "semoncer" is a French naval term, the exact meaning of which is, "to hail with a loud voice;" whereas the word "summon," by which it is translated, and which seems to be its literal translation, conveys an idea of compulsion. In order to avoid the sense of constraint which attaches to this expression, the Minister of Marine thought right to suppress the word "semoncer" in the French project of instructions, and to alter the paragraph in which it would have stood, as follows: "S'il néglige de le faire les deux Gouvernements admettent qu'on peut lui donner un premier avertissement en tirant 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" (Should she neglect to do so, the two Governments admit that a first warning may be given her by a blank gun; and should this fail, a second warning may be given in the shape of a shotted gun, which must be levelled so as not to strike her). We should therefore wish to see inserted in the English instructions also an expression corresponding exactly with that of "donner un avertissement," in lieu of the word "summon."

2. The 10th paragraph of the Admiralty project states that, "in every case, it is to be clearly understood that the man-of-war which determines to board a foreign merchant-vessel, does so at her own risk." For this the Minister of Marine would wish to substitute, for the sake of clearness, "in every case, it is to be clearly understood that the captain of a man-of-war," &c.

Instructions proposed to be issued to Commanders of French Ships of War.

IN consequence of the lapse of the Treaty with Great Britain for the suppression of the Slave Trade, the French and British Governments have felt the necessity of coming to some provisional arrangement with respect to the visit of merchant-vessels suspected of fraudulently assuming the British flag.

2. Protected by the independence of her national flag, a merchant-vessel navigating the high seas is subject to no foreign jurisdiction, unless by virtue of any Treaty. A man-of-war can therefore only visit, detain, arrest, and seize those merchant-vessels which she recognizes as being of the same nationality as herself.

3. As the flag of a vessel is, at first sight, the distinctive mark of her nationality, and consequently of the jurisdiction to which she is subject, it is natural that a merchantman, passing within sight of a man-of-war on the high seas, should hoist her colours with a view to making her nationality known. As soon as the man-of-war has made herself known by hoisting her colours and distinguishing marks, the merchantman must also hoist her national flag as well.

4. Should the merchantman neglect to do this, the two Governments admit that a first warning may be given her by firing a blank gun, and should this have no result, a second warning may be given by means of a shotted gun, to be levelled in such a manner as not to strike her.

5. As soon as the merchantman has established her nationality by hoisting her flag, the foreign man-of-war has no right to exercise the least control over her. The utmost the man-of-war can do is, in certain cases, to speak her, that is, to request her to answer questions addressed to her through a speaking-trumpet or

otherwise, without, however, impeding her course. But if the nationality laid claim to by a merchantman in virtue of the colours she hoists can be seriously called in question, either on the grounds of positive information, or in consequence of signs, calculated to show that the vessel does not belong to the nation whose colours she has assumed, the foreign man-of-war may have recourse to the verification of her pretended nationality.

6. In order to effect this, a boat may be sent to board the suspected ship after she has been hailed and informed of this intention. The verification will consist in the examination of the papers establishing the vessel's nationality. No demand may be made beyond the production of these documents.

7. All inquiry into the nature of the cargo; or the commercial operations of the said ships; in a word, on any other subject save that of their nationality; all search, all visit, are absolutely forbidden.

8. The officer entrusted with this verification must conduct his proceedings with all possible courtesy and forbearance. He must leave the vessel as soon as the verification has been effected, and offer to note on the ship's papers the fact and circumstances of the verification, and the reasons which determined him to resort to it.

9. Moreover, except in the case of legitimate suspicion of fraud, it ought never to be necessary for the commander of a foreign man-of-war to board or send on board a merchant-vessel, so numerous are the signs which, putting colours out of the question, reveal the nationality of a vessel to the practised eye of a sailor.

10. In every supposition it is thoroughly understood that the captain of a man-of-war who decides upon boarding or sending on board a merchant-vessel, always does it at his own risk and peril, and remains responsible for all the consequences of his act.

11. The commander of a man-of-war who shall have had recourse to this measure, must in every case make it the subject of a report to his Government, and inform them of the evidence upon which he acted. This report, and the motives which induced him to resort to this test, will be officially communicated to the Government to which the vessel which shall have been subjected to the verification of her flag shall belong.

Whenever this shall not be justified by sufficient reasons, or shall not have been conducted in a suitable manner, a claim may arise for indemnity.

Although the foregoing instructions apply particularly to vessels sailing under the English flag, and have for their object reciprocally to prevent all misunderstanding between the Governments of France and Great Britain, it is thoroughly understood that they must direct you in your relations with the navies of all nations with which the Government of the Emperor is at peace.

Inclosure 2 in No. 25.

The Earl of Malmesbury to the Duke of Malakoff.

M. le Maréchal,

Foreign Office, March 9, 1859.

I DID not fail to transmit to the Lords Commissioners of the Admiralty the Memorandum which your Excellency communicated to me on the 25th ultimo, suggesting certain alterations in the 4th and 10th paragraphs of the Instructions which it is proposed to issue to the Commanders of British cruisers, for their guidance in regard to the visit of vessels navigating under the French flag.

I have now to acquaint your Excellency that their Lordships have informed me that they do not object to the proposed alterations; and I accordingly transmit to your Excellency a copy of the 4th and 10th paragraphs of the English Instructions, as amended in conformity with the suggestions of the Imperial Government.

I have further to state to your Excellency, that I should be glad to be informed when the corresponding Instructions will be issued to the Commanders of French cruisers, in order that the English Instructions may be given at the same time to the Commanders of British ships of war.

I am, &c.
(Signed) MALMESBURY.

Inclosure 3 in No. 25.

Copy of the 4th and 10th Paragraphs of the 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.

4. SHOULD she 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 ensure that she is not struck by the shot.

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.

Inclosure 4 in No. 25.

*Count Walewski to the Duke of Malakoff.**

M. le Maréchal,

Paris, le 19 Mars, 1859.

M. LE MINISTRE de la Marine vient de m'annoncer qu'il a pris connaissance des changements apportés par l'Amirauté Britannique au texte des paragraphes 4 et 10 du projet d'instructions sur l'enquête du pavillon, et qu'une identité complète étant établie entre les instructions préparées par les deux Gouvernements, il se propose d'envoyer celles destinées à nos officiers commandant à la mer, par le premier courrier qui partira le mois prochain, pour chacun des chefs-lieux de nos stations navales. Je m'empresse de vous transmettre cette information comme suite à ma lettre du 14 de ce mois, et je vous prie d'en faire part à Lord Malmesbury.

Je reçois, d'ailleurs, à l'instant, votre dépêche sous le No. 32, dans laquelle vous m'annoncez que le Principal Secrétaire d'Etat de la Reine vous a exprimé le désir d'obtenir une copie de nos instructions définitives. Bien que le texte ne puisse en être douteux maintenant, je demande à M. le Ministre de la Marine de me mettre en mesure de vous faire parvenir cette pièce, et je vous prie de réclamer de Lord Malmesbury une communication des instructions que le Gouvernement Anglais compte adresser, de son côté, aux officiers de la Marine Britannique.

Agréé, &c.

(Signé) A. WALEWSKI.

(Translation.)

M. le Maréchal,

Paris, March 19, 1859.

THE Minister of Marine has just announced to me that he has taken cognizance of the changes introduced by the English Admiralty into the text of paragraphs 4 and 10 of the proposed instructions on the subject of the examination of colours, and that a complete identity being established between the instructions prepared by the two Governments, he intends to send those destined for our officers commanding at sea, by the first messenger who will leave next month for the several head-quarters of our naval stations. I hasten to transmit this information to you in pursuance of my letter of the 14th instant, and I beg you to communicate it to Lord Malmesbury.

I have just received your despatch No. 32, in which you announce to me that Her Majesty's Principal Secretary of State has expressed to you his wish to obtain a copy of our definitive instructions. Although their text cannot now be ambiguous, I have requested the Minister of Marine to put me in a position to transmit this document to you, and I beg you to ask Lord Malmesbury to communicate to you the instructions which the English Government intend to address on their part to the officers of the British Navy.

Accept, &c.

(Signed) A. WALEWSKI.

* Communicated to the Earl of Malmesbury by the Duke of Malakoff, March 23.

Inclosure 5 in No. 25.

The Duke of Malakoff to the Earl of Malmesbury.

M. le Comte,

Albert-Gate House, le 24 Mars, 1859.

POUR faire suite à ma lettre du 19 de ce mois, j'ai l'honneur de vous transmettre ci-joint, copie des instructions relatives à l'enquête du pavillon que M. le Ministre de la Marine se propose d'envoyer aux officiers de la Marine Impériale commandant à la mer. Elles seront adressées, sous forme de note, avec le texte Anglais en regard, aux commandants de nos stations navales, et il leur sera prescrit de s'y conformer provisoirement pour la vérification des pavillons suspects, en attendant que les trois Gouvernements de France, de la Grande Bretagne, et des Etats Unis, se soient mis complètement d'accord sur cette importante question.

En m'invitant à communiquer ces instructions au Gouvernement de la Reine, le Comte Walewski me charge de demander à votre Excellence une copie de celles que le Gouvernement Anglais compte adresser de son côté aux officiers de sa Marine Britannique.

Veuillez, &c.

(Signé) MAL. PELISSIER.

(Translation.)

M. le Comte,

Albert-gate House, March 24, 1859.

IN pursuance of my letter of the 19th instant, I have the honour to transmit to you herewith, a copy of the instructions relative to the verification of a ship's colours, which the Minister of Marine proposes to send to the officers of the Imperial Navy commanding at sea. They will be addressed in the form of a note, with the English text annexed, to the commanders of our naval stations; and they will be ordered to act in conformity with them provisionally in verifying the flags of suspected vessels, until the three Governments of France, Great Britain, and the United States, have arrived at a complete agreement upon this important question.

In calling upon me to communicate these instructions to Her Majesty's Government, Count Walewski desires me to ask your Excellency for a copy of those which the English Government intend to address to the officers of the British Navy.

Accept, &c.

(Signed) MAL. PELISSIER.

Inclosure 6 in No. 25.

Instructions issued to Commanders of French Ships of War.

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.

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.

Le pavillon d'un navire étant de prime abord 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 doit donc également hisser son pavillon de nation.

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.

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 du droit de le 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.

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 des papiers constatant la nationalité du navire. Rien ne pourra être réclamé de plus que la présentation de ces pièces.

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.

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

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.

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 son acte.

Le commandant d'un bâtiment de guerre 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 motifs qui ont provoqué cette constatation sera officiellement donnée au Gouvernement auquel appartiendra 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, ou 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 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.

[For Translation, see Translation of Inclosure 1 in No. 25.]

No. 26.

Lord Napier to the Earl of Malmesbury.—(Received March 29.)

My Lord,

Washington, March 14, 1859.

UNDER your Lordship's instructions, conveyed to me in your despatch of January 14, I imparted to General Cass the Memorandum submitted to Her Majesty's Government by that of France, in reference to the verification of the nationality of merchant-vessels at sea.

I had the honour of receiving, in your Lordship's despatch of the 11th of February, a draft of instructions based upon the Memorandum above mentioned, which Her Majesty's Government propose to issue to the naval officers of Great Britain, and which the French Government have, as I learn from M. de Sartiges, adopted, with some slight verbal modification, as a rule for the conduct of their ships of war in the same department of duty.

After consulting with M. de Sartiges, I thought it desirable that the Government of the United States should be placed in possession of the draft of instructions referred to. I have accordingly forwarded it to General Cass, with the accompanying note, in which I have also urged upon him the recognition of the principle that

a ship of war has a right to compel a merchant-vessel on the high seas to display her flag, even by the use of force, if necessary.

I have, &c.
(Signed) NAPIER.

Inclosure in No. 26.

Lord Napier to General Cass.

Sir,

Washington, March 12, 1859.

IN my note of February 3, I had the honour 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 on the same subject 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 colours 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 neutrality of shipping on the high seas.

I have, &c.
(Signed) NAPIER.

No. 27.

The Earl of Malmesbury to Lord Napier.

My Lord,

Foreign Office, March 31, 1859.

WITH reference to your despatch of the 14th instant, I have to acquaint your Lordship that I approve your note to General Cass, communicating a copy of the instructions which Her Majesty's Government propose to issue to the commanders of British ships of war, for their guidance in regard to the visit of vessels navigating under the French flag.

Some alterations have, at the suggestion of the French Government, been made in the 4th and 10th paragraphs of these instructions, as you will have learnt from the correspondence between the Duke of Malakoff and myself, of which copies were inclosed in my despatch of the 25th instant; and I now inclose copies of the instructions, as agreed upon between the two Governments, for the common

action of their cruizers, until the Governments of England, France, and the United States shall have come to a complete understanding on this question.

I am, &c.
(Signed) MALMESBURY.

No. 28.

The Earl of Malmesbury to the Duke of Malakoff.

M. le Maréchal,

Foreign Office, April 2, 1859.

I HAVE the honour to acknowledge the receipt of your Excellency's note of the 24th ultimo, inclosing a copy of the Instructions proposed to be issued to the commanders of French cruizers for their guidance in regard to the question of the right of visit; and, in compliance with your Excellency's request, I beg leave to transmit, herewith, a copy of the Instructions which, on the part of Her Majesty's Government, it is proposed to issue forthwith to the commanders of British cruizers.

I am, &c.
(Signed) MALMESBURY.

Inclosure in No. 28.

Instructions about to be issued to the Commanders of British Cruizers.

Sir,

Admiralty,

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 Treaty) any merchant-vessel not recognized as belonging to her own nation.

3. The colours 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 colours, 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 ensure that she is not struck by the shot.

5. Immediately that the colours 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 colours 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 colours 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 colours 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, &c.

No. 29.

Lord Napier to the Earl of Malmesbury.—(Received April 4.)

My Lord,

Washington, March 16, 1859.

IN conformity with your Lordship's instructions, conveyed to me in your despatch of the 15th ultimo, I have placed in the hands of the Secretary of State, the "Times" newspaper, containing a report of a speech delivered by your Lordship in the House of Lords, on the 14th of February, in regard to the measures contemplated for the verification of the nationality of vessels at sea, as well as for the suppression of the African Slave Trade, now so extensively prosecuted by the surreptitious adoption of the flag of the United States.

I pointed out, at the same time, to General Cass the erroneous passage in the report, by which your Lordship is represented to have affirmed that the United States had engaged to place ten steam gun-boats on the coast of Africa.

In acknowledgment of my communication, the Secretary of State has informed me that the view taken by your Lordship was marked by sound judgment, and dictated by a candid spirit, and that he highly appreciates your Lordship's sentiments and the explanations which you afforded to Parliament on the occasion referred to.

I have, &c.
(Signed) NAPIER.

No. 30.

The Earl of Malmesbury to Lord Lyons.

My Lord,

Foreign Office, April 21, 1859.

THE Duke of Malakoff has stated to me, that the French Government wish that your Lordship should be directed to join the French Minister at Washington,

in inviting the United States' Government to adopt identically the instructions which have been provisionally agreed upon by the English and French Governments, for the common action of their cruisers, in regard to the verification of the nationality of merchant-vessels at sea.

I have, accordingly, to instruct your Lordship to acquaint M. Sartiges that you have been directed to place yourself in communication with him on this subject, and you will join with him in urging upon the United States' Government the adoption, identically, for American cruisers, of the instructions which have been provisionally agreed upon by the French and English Governments.

A copy of these instructions was transmitted to Lord Napier in my despatch of the 31st ultimo.

I am, &c.
(Signed) MALMESBURY.

No. 31.

Lord Lyons to the Earl of Malmesbury.—(Received May 10.)

(Extract.)

Washington, April 25, 1859.

THE day before yesterday I placed in General Cass's hand a copy of the amended instructions agreed upon between the Governments of Great Britain and France for the common action of their cruisers against vessels engaged in the Slave Trade. I had previously ascertained that the Comte de Sartiges had given to General Cass a copy of the French text of these instructions, in a similar manner, at a personal interview.

General Cass replied that he had just received from the French Government a paper for which he had been waiting; and that he should probably be ready to discuss the whole matter with me next week.

With respect to the special question which was propounded by the British and French Governments respecting the steps to be taken in the case of a vessel refusing to show any colours at all, General Cass told me that he could have no difficulty in assenting to the proposal that a boat should be permitted to go alongside; and further, that his own private opinion was that in case a ship refused to show her colours, it might be determined that the officer of a cruiser boarding her should incur no responsibility by so doing; but there might be objections to this which did not at the moment occur to him. He said that the Executive might issue orders on the subject to the collectors at the ports in the Union, and to the officers in command of the United States' cruisers, desiring them to urge masters of American ships to show their colours upon all proper occasions; but that the President had no power, without an Act of the Legislature, to impose penalties upon masters of vessels who should, notwithstanding, neglect or refuse to do so.

General Cass proceeded to remark that there were now few or no points of difference between the Governments of Great Britain, the United States, and France upon the Slave Trade: all now admitted that cruisers had no right to board vessels of a foreign nation; all were agreed that if the grounds of suspicion against a ship were serious and reasonable, no Government should raise a complaint if she should be boarded by mistake by a foreign cruiser, provided that the proceedings were conducted with proper precautions and due courtesy. He concluded by repeating that he should in a few days be prepared to enter upon the whole matter with me.

No. 32.

Lord Lyons to the Earl of Malmesbury.—(Received May 24.)

(Extract.)

Washington, May 10, 1859.

I HAD the honour, on the 7th instant, to receive your Lordship's despatch of the 21st ultimo, directing me to join the Count de Sartiges, the French Minister here, in urging upon the Government of the United States the adoption identically for American cruisers, of the instructions which have been provisionally agreed upon by the Governments of Great Britain and France, in regard to the verification of the nationality of merchant-vessels at sea.

I have the honour to inclose a copy of a note on the subject, addressed to General Cass yesterday, by the Count de Sartiges, as well as a copy of an almost identic note sent in by me at the same time.

The only difference between the French note and mine (except that necessarily resulting from the different idioms of the two languages) consists in the omission by me of a reference made by M. de Sartiges to a note addressed to him by the American Government on the 25th of January last.

General Cass told me yesterday that it was his intention to make, in the course of this week, an answer to the communications which he received some time ago from the British and French Missions, on the general question of the verification of the nationality of merchant-vessels.

Inclosure 1 in No. 32.

The Count de Sartiges to General Cass.

Monsieur,

Washington, le 9 Mai, 1859.

J'AI eu précédemment l'honneur de vous communiquer les instructions que le Gouvernement de l'Empereur avait données aux officiers de la marine Impériale relativement au mode d'enquête de la nationalité des navires marchands rencontrés par des bâtiments de guerre.

Des instructions identiques, et qui vous ont été communiquées par M. le Ministre d'Angleterre à Washington, ont été également adressées aux officiers de la marine Anglaise.

Aujourd'hui le Gouvernement de l'Empereur, d'accord avec le Gouvernement de Sa Majesté Britannique sur la démarche à faire, comme il l'a été pour la rédaction des instructions aux officiers de la marine de France et de celle d'Angleterre, et s'en référant à l'esprit et à la lettre de la réponse que vous m'avez fait l'honneur de m'adresser le 25 Janvier dernier, me charge d'inviter le Gouvernement des Etats Unis à adopter pour les croiseurs des bâtiments de la marine Fédérale des instructions identiques à celles qui ont été provisoirement adoptées pour leur marine de guerre par les Gouvernements de France et d'Angleterre.

(Signé) DE SARTIGES.

(Translation.)

Sir,

Washington, May 9, 1859.

I HAVE already had the honour to communicate to you the instructions which the French Government had given to the officers of the Imperial navy respecting the method of verifying the nationality of merchant-vessels fallen in with by men-of-war.

Identical instructions, which have been communicated to you by the English Minister at Washington, have been likewise addressed to the officers of the English navy.

The Government of the Emperor, agreeing with Her Britannic Majesty's Government on the steps to be taken, as they did in the revision of the instructions issued to the officers of the French and English navies, and acting on the spirit and letter of the answer which you did me the honour of addressing to me on the 25th of January last, desire me to invite the Government of the United States to adopt for the cruisers of vessels of the Federal navy instructions identical with those which have been provisionally adopted by the Governments of France and England.

(Signed) DE SARTIGES.

Inclosure 2 in No. 32.

Lord Lyons to General Cass.

Sir,

Washington, May 9, 1859.

I HAD, some days ago, the honour 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, &c.
(Signed) LYONS.

No. 33.

Lord Lyons to the Earl of Malmesbury.—(Received May 30.)

(Extract.)

Washington, May 16, 1859.

I HAVE the honour to transmit to your Lordship herewith a copy of a note addressed to me on the 12th instant, by General Cass, in reply to the note dated the 9th instant, in which I invited the Government of the United States to adopt, identically for their own cruisers, the instructions agreed upon by the Governments of Great Britain and France, in regard to the verification of the nationality of merchant-vessels at sea.

In reply to the almost identic note presented by my French colleague, Comte de Sartiges, General Cass has transmitted to him a copy of this note to me, accompanied only by a short letter, of which also I have the honour to inclose a copy herewith.

Your Lordship will perceive that General Cass also officially communicates to me the note addressed by him to the Comte de Sartiges on the 25th January last.

General Cass discusses in his note to me various questions of principle. With regard to the special object of invitation, to which it is an answer, he says, that the United States will issue renewed instructions to its naval officers, and that a copy of them shall be furnished to me; but he does not engage that they shall be identical with those agreed upon by the British and French Governments.

I have not failed to remind General Cass that the instructions finally adopted by Great Britain and France are those which I placed in his hands on the 23rd ultimo, and that they slightly differ from the draft transmitted to him in Lord Napier's note of the 12th March last.

Inclosure 1 in No. 33.

General Cass to Lord Lyons.

My Lord,

Washington, May 12, 1859.

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 25th January, 1859. Since that time I have received from Count Sartiges an extract from an official despatch of Count Walewski's, dated 13th April, which fully sustains the doctrines of my note of the 25th January, and the interpretation which, in conformity with those documents, I had placed upon the French project. 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 clearly to be 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 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 instruction 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 shall 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 coast of Africa and Cuba, the abuse of either the American or the 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 in 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 an 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 "*Mariana Flora*" (XI 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 vessel is, under the circumstances, bound to lie by or wait the approach of any other ship."

Ordinarily, the above observation of any 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 is to 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 peculiar circumstances, under the general provisions of the law of nations.

Before closing this despatch, I take the liberty to advert, for a moment, to the 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 despatch 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 despatches just mentioned, I content myself with thus having recalled the subject to Lord Malmesbury's attention.

I have, &c.
(Signed) LEWIS CASS.

Inclosure 2 in No. 33.

General Cass to Count de Sartiges.

Sir,

Washington, January 25, 1859.

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 the 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-vessels 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 and 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 colours; 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 this 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 its 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 these 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 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 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 arrangement upon a detailed plan.

I avail, &c.
(Signed) LEW. CASS.

Inclosure 3 in No. 33.

General Cass to Count de Sartiges.

Sir,

Washington, May 12, 1859.

YOUR note of the 10th 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 inclose 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, &c.
(Signed) LEWIS CASS.

CORRESPONDENCE with the United States'
Government on the question of Right
of Visit.

*Presented to both Houses of Parliament by Com-
mand of Her Majesty. 1859.*

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