

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING

In compliance with a resolution of the Senate, the proceedings adopted by the Executive in reference to the case of the brig Creole.

FEBRUARY 21, 1842.

Read, and referred to the Committee on Printing; with motion to print 1,000 additional copies.

FEBRUARY 23, 1842.

Ordered to be printed, and that 1,000 additional copies be furnished for the use of the Senate.

To the Senate of the United States:

I transmit to the Senate, herewith, a report from the Secretary of State, with an accompanying paper, in answer to their resolution of the 18th instant.

JOHN TYLER.

WASHINGTON, January 21, 1842.

DEPARTMENT OF STATE,
Washington, February 19, 1842.

The Secretary of State, to whom has been referred the resolution of the Senate of the 18th instant, requesting the President to communicate to that body "if no consideration connected with the public interest shall in his opinion render such communication inexpedient, whether any, and if any, what, proceedings have been adopted by the Executive in reference to the question involved in the case of the brig 'Creole,' since the communication made by the President on the 19th ultimo, in answer to the resolution of this body of the 11th of January last," has the honor to report to the President the accompanying extract of a letter recently addressed by this Department to the minister of the United States at London.

Respectfully submitted.

DANIEL WEBSTER.

To the PRESIDENT of the United States.

Mr. Webster to Mr. Everett.

[Extract.]

DEPARTMENT OF STATE, *January 29, 1842.*

I regret to be obliged to acquaint you with a very serious occurrence, which recently took place in a port of one of the Bahama islands.

It appears that the brig "Creole," of Richmond, Virginia, Ensor, master, bound to New Orleans, sailed from Hampton Roads on the 27th of October last, with a cargo of merchandise, principally tobacco, and slaves (about one hundred and thirty-five in number); that on the evening of the 7th of November, some of the slaves rose upon the crew of the vessel, murdered a passenger, named Hewell, who owned some of the negroes, wounded the captain dangerously, and the first mate and two of the crew severely; that the slaves soon obtained complete possession of the brig, which, under their direction, was taken into the port of Nassau, in the island of New Providence, where she arrived on the morning of the 9th of the same month; that at the request of the American consul in that place, the Governor ordered a guard on board, to prevent the escape of the mutineers, and with a view to an investigation of the circumstances of the case; that such investigation was accordingly made by two British magistrates, and that an examination also took place by the consul; that on the report of the magistrates, nineteen of the slaves were imprisoned by the local authorities as having been concerned in the mutiny and murder, and their surrender to the consul, to be sent to the United States for trial for these crimes, was refused, on the ground that the Governor wished first to communicate with the Government in England on the subject; that through the interference of the colonial authorities, and even before the military guard was removed, the greater number of the remaining slaves were liberated, and encouraged to go beyond the power of the master of the vessel, or the American consul, by proceedings which neither of them could control. This is the substance of the case, as stated in two protests, one made at Nassau and one at New Orleans, and the consul's letters, together with sundry depositions taken by him, copies of all which papers are herewith transmitted.

The British Government cannot but see that this case, as presented in these papers, is one calling loudly for redress. The "Creole" was passing from one port of the United States to another, in a voyage perfectly lawful, with merchandise on board, and also with slaves, or persons bound to service, natives of America, and belonging to American citizens, and which are recognised as property by the constitution of the United States in those States in which slavery exists. In the course of the voyage, some of the slaves rose upon the master and crew, subdued them, murdered one man, and caused the vessel to be carried into Nassau. The vessel was thus taken to a British port, not voluntarily, by those who had the lawful authority over her, but forcibly and violently, against the master's will, and with the consent of nobody but the mutineers and murderers; for there is no evidence that these outrages were committed with the concurrence of any of the slaves, except those actually engaged in them. Under these circumstances, it would seem to have been the plain and obvious duty of the authorities at Nassau, the port of a friendly Power, to assist the American consul in putting an end to the captivity of the master and crew, restoring to them the control of the vessel,

and enabling them to resume their voyage, and to take the mutineers and murderers to their own country to answer for their crimes before the proper tribunal. One cannot conceive how any other course could justly be adopted, or how the duties imposed by that part of the code regulating the intercourse of friendly states, which is generally called the comity of nations, could otherwise be fulfilled. Here was no violation of British law attempted or intended on the part of the master of the "Creole," nor any infringement of the principles of the law of nations. The vessel was lawfully engaged in passing from port to port in the United States. By violence and crime she was carried, against the master's will, out of her course, and into the port of a friendly Power. All was the result of force. Certainly, ordinary comity and hospitality entitled him to such assistance from the authorities of the place as should enable him to resume and prosecute his voyage, and bring the offenders to justice. But, instead of this, if the facts be as represented in these papers, not only did the authorities give no aid for any such purpose, but they did actually interfere to set free the slaves, and to enable them to disperse themselves beyond the reach of the master of the vessel or their owners. A proceeding like this cannot but cause deep feeling in the United States. It has been my purpose to write you at length upon this subject, in order that you might lay before the Government of her Majesty fully and without reserve, the views entertained upon it by that of the United States, and the grounds on which those views are taken. But the early return of the packet precludes the opportunity of going thus into the case in this despatch; and as Lord Ashburton may shortly be expected here, it may be better to enter fully into it with him, if his powers shall be broad enough to embrace it. Some knowledge of the case will have reached England before his departure, and very probably his Government may have given him instructions. But I request, nevertheless, that you lose no time in calling Lord Aberdeen's attention to it in a general manner, and giving him a narrative of the transaction, such as may be framed from the papers now communicated, with a distinct declaration that if the facts turn out as stated, this Government thinks it a clear case for indemnification.

You will see that in his letter of the 7th January, 1837, to Mr. Stevenson, respecting the claim for compensation in the cases of the "Comet," "Encomium," and "Enterprise," Lord Palmerston says that "his Majesty's Government is of opinion that the rule by which these claims should be decided, is, that those claimants must be considered entitled to compensation who were lawfully in possession of their slaves within the British territory, and who were disturbed in their legal possession of those slaves by functionaries of the British Government." This admission is broad enough to cover the case of the "Creole," if its circumstances are correctly stated. But it does not extend to what we consider the true doctrine, according to the laws and usages of nations; and, therefore, cannot be acquiesced in as the exactly correct general rule. It appears to this Government that not only is no unfriendly interference by the local authorities to be allowed, but that aid and succor should be extended in these, as in other cases which may arise, affecting the rights and interests of citizens of friendly States.

We know no ground on which it is just to say that these colored people had come within, and were within, British territory, in such sense as that the laws of England affecting and regulating the conditions of persons could properly act upon them. As has been already said, they were not there voluntarily; no human being belonging to the vessel was within

British territory of his own accord, except the mutineers. There being no importation, nor intent of importation, what right had the British authorities to inquire into the cargo of the vessel, or the condition of persons on board? These persons might be slaves for life; they might be slaves for a term of years, under a system of apprenticeship; they might be bound to service by their own voluntary act; they might be in confinement for crimes committed; they might be prisoners of war; or they might be free. How could the British authorities look into and decide any of these questions? Or, indeed, what duty or power, according to the principles of national intercourse, had they to inquire at all? If, indeed, without unfriendly interference, and notwithstanding the fulfilment of all of their duties of comity and assistance, by these authorities, the master of the vessel could not retain the persons, or prevent their escape, then it would be a different question altogether, whether resort could be had to British tribunals, or the power of the Government in any of its branches, to compel their apprehension and restoration. No one complains that English law shall decide the condition of all persons actually incorporated with British population, unless there be treaty stipulation making other provision for special cases. But in case of the "Creole" the colored persons were still on board an American vessel, that vessel having been forcibly put out of the course of her voyage by mutiny; the master desiring still to resume it, and calling upon the consul of his Government resident at the place and upon the local authorities to enable him so to do, by freeing him from the imprisonment to which mutiny and murder had subjected him, and furnishing him with such necessary aid and assistance as are usual in ordinary cases of distress at sea. These persons, then, cannot be regarded as being mixed with the British people, or as having changed their character at all, either in regard to country or personal condition. It was no more than just to consider the vessel as still on her voyage, and entitled to the succor due to other cases of distress, whether arising from accident or outrage. And that no other view of the subject can be true is evident from the very awkward position in which the local authorities have placed their Government in respect to the mutineers still held in imprisonment. What is to be done with them? How are they to be punished? The English Government will probably not undertake their trial or punishment; and of what use would it be to send them to the United States, separated from their ship, and at a period so late as that, if they should be sent, before proceedings could be instituted against them the witnesses might be scattered over half the globe. One of the highest offences known to human law is thus likely to go altogether unpunished.

In the note of Lord Palmerston to Mr. Stevenson, above referred to, his lordship said that, "slavery being now abolished throughout the British empire, there can be no well-founded claim for compensation in respect of slaves who, under any circumstances, may come into the British colonies, any more than there would be with respect to slaves who might be brought into the United Kingdom." I have only to remark upon this, that the Government of the United States sees no ground for any distinction founded on an alteration of British law in the colonies. We do not consider that the question depends at all on the state of British law. It is not that in such cases the active agency of British law is invoked and refused; it is, that unfriendly interference is deprecated, and those good offices and friendly assistances expected which a Government usually affords to citizens of a friendly Power when

instances occur of disaster and distress. All that the United States require in those cases, they would expect in the ports of England, as well as in those of her colonies. Surely, the influence of local law cannot affect the relations of nations in any such matter as this. Suppose an American vessel, with slaves lawfully on board, were to be captured by a British cruiser, as belonging to some belligerent, while the United States were at peace; suppose such prize carried into England, and the neutrality of the vessel fully made out in the proceedings in Admiralty, and a restoration consequently decreed—in such case, must not the slaves be restored, exactly in the condition in which they were when the capture was made? Would any one contend that the fact of their having been carried into England by force set them free?

No alteration of her own local laws can either increase or diminish, or any way affect, the duty of the English Government and its colonial authorities in such cases, as such duty exists according to the law, the comity, and the usages of nations. The persons on board the "Creole" could only have been regarded as Americans passing from one part of the United States to another, within the reach of British authority only for the moment, and this only by force and violence. To seek to give either to persons or property thus brought within reach an English character, or to impart to either English privileges, or to subject either to English burdens or liabilities, cannot, in the opinion of the Government of the United States, be justified.

Suppose that by the law of England all blacks were slaves, and incapable of any other condition; if persons of that color, free in the United States, should, in attempting to pass from one port to another in their own country, be thrown by stress of weather within British jurisdiction, and there detained for an hour or a day, would it be reasonable that British authority should be made to act upon their condition, and to make them slaves! Or suppose that an article of merchandise, opium for instance, should be declared by the laws of the United States to be a nuisance, a poison—a thing in which no property could lawfully exist or be asserted; and suppose that an English ship with such a cargo on board, bound from one English port to another, should be driven by stress of weather, or by mutiny of the crew, into the ports of the United States, would it be held just and reasonable that such cargo should receive its character from American law, and be thrown overboard and destroyed by the American authorities? It is in vain that any attempt is made to answer these suggestions by appealing to general principles of humanity. This is a point in regard to which nations must be permitted to act upon different views, if they entertain different views, under their actually existing condition, and yet hold commercial intercourse with one another, or not hold any such intercourse at all. It may be added, that all attempts by the Government of one nation to force the influence of its laws on that of another, for any object whatsoever, generally defeat their own purposes, by producing dissatisfaction, resentment, and exasperation. Better is it, far better in all respects, that each nation should be left without interference or annoyance, direct or indirect, to its undoubted right of exercising its own judgment in regard to all things belonging to its domestic interests and domestic duties.

There are two general considerations, of the highest practical importance, to which you will, in the proper manner, invite the attention of her Majesty's Government.

The first is, that, as civilization has made progress in the world, the intercourse of nations has become more and more independent of different forms of government and different systems of law or religion. It is not now, as it was in ancient times, that every foreigner is considered as therefore an enemy; and that, as soon as he comes into the country, he may be lawfully treated as a slave; nor is the modern intercourse of states carried on mainly, or at all, for the purpose of imposing, by one nation on another, new forms of civil government, new rules of property, or new modes of domestic regulation. The great communities of the world are regarded as wholly independent, each entitled to maintain its own system of law and Government, while all, in their mutual intercourse, are understood to submit to the established rules and principles governing such intercourse. And the perfecting of this system of communication among nations requires the strictest application of the doctrine of non-intervention of any with the domestic concerns of others.

The other is, that the United States and England, now by far the two greatest commercial nations in the world, touch each other both by sea and land at almost innumerable points, and with systems of general jurisprudence essentially alike, yet differing in the forms of their government and in their laws respecting personal servitude; and that so widely does this last-mentioned difference extend its influence, that without the exercise to the fullest extent of the doctrine of non-interference and mutual abstinence from anything affecting each other's domestic regulations, the peace of the two countries, and therefore the peace of the world, will be always in danger.

The Bahamas (British possessions) push themselves near to the shores of the United States, and thus lie almost directly in the track of that great part of their coasting traffic, which, doubling the cape of Florida, connects the cities of the Atlantic with the ports and harbors on the gulf of Mexico and the great commercial emporium on the Mississippi. The seas in which these British possessions are situated are seas of shallow water, full of reefs and sandbars, subject to violent action of the winds, and to the agitations caused by the gulf stream. They must always, therefore, be of dangerous navigation, and accidents must be expected frequently to occur, such as will cause American vessels to be wrecked on British islands, or compel them to seek shelter in British ports. It is quite essential that the manner in which such vessels, their crews, and cargoes, in whatever such cargoes consist, are to be treated, in these cases of misfortune and distress, should be clearly and fully known.

You are acquainted with the correspondence which took place a few years ago, between the American and English Governments, respecting the cases of the "Enterprise," the "Comet," and the "Encomium." I call your attention to the Journal of the Senate of the United States, containing resolutions unanimously adopted by that body respecting those cases. These resolutions, I believe, have already been brought to the notice of her Majesty's Government, but it may be well that both the resolutions themselves and the debates upon them should be again adverted to. You will find the resolutions, of course, among the documents regularly transmitted to the legation, and the debates in the newspapers with which it has also been supplied from this Department.

You will avail yourself of an early opportunity of communicating to Lord Aberdeen, in the manner which you may deem most expedient, the substance of this despatch; and you will receive further instructions respecting the case of the "Creole," unless it shall become the subject of discussion at Washington.

In all your communications with her Majesty's Government, you will seek to impress it with a full conviction of the dangerous importance to the peace of the two countries of occurrences of this kind, and the delicate nature of the questions to which they give rise.

I am, sir, your obedient servant,

DANIEL WEBSTER.

EDWARD EVERETT, Esq., &c., &c.