



ROYAL GAZETTE.

[SUPPLEMENT.]

FREDERICTON, NEW BRUNSWICK, SATURDAY, MARCH 11, 1843.

[From the Quarterly Review.]

THE UNITED STATES AND THE RIGHT OF SEARCH.

The case is this: England and certain other maritime powers have agreed in declaring the trading in slaves to be felony and piracy, and they have agreed by special treaties that their respective cruisers shall intercept and send in for adjudication any ships belonging to their respective nations which may be found practising this felony and piracy—and what we say of America equally applies to any other country with which we might not have special treaties on the point)—America though she too has proscribed the slave trade, has not entered into this special compact; and therefore, even though a British cruiser should see an American vessel loaded with slaves, it has no right, and pretends to no right whatever, to interfere. The American ship in that case would be indeed violating its own laws; but to its own laws it must be left: the British cruiser has nothing to do in the matter, and does nothing. But it has a right and a duty to see that British ships do not carry on this trade; and it has also, under the special treaties just mentioned, a reciprocal right and duty to see that Spanish, Portuguese and Brazillian ships do not commit the prohibited offence. But then, nothing is easier for the British, Spanish, Portuguese, or Brazillian offender, when in danger of detection, than to hoist, for the nonce, an American flag; and some American Statesmen pretend, that under no circumstances, however suspicious or fraudulent, shall any vessel bearing their flag be questioned. It is well known, that the ships of every nation are provided at the expense of about ten shillings each, with the flags of every other nation; and, if the mere momentary hoisting of a bit of stuff were to preclude the possibility of inquiry into the *bona fide* right of the ship to wear it, there could be no possible check on the abuse. British felons and Brazillian pirates might roam the seas with impunity, by only having one bit of American bunting to hoist whenever they were in danger of detection.

All that England says is, that under the ancient and necessary common law of the sea, and according to the ordinary rules of common sense, we are entitled to satisfy ourselves that the ship which hoists these colours is really entitled to hoist them. If she be *bona fide* American, tho' she was chock full of slaves, we pretend to no right to meddle with her, but we claim a right to see that she is not one of our own ships committing this crime under the additional offence of fraudulent colours. Can any rational man deny the propriety, the necessity of such a right?—Surely not; and above all, when it is a right that we admit to others as freely and as largely as we claim it for ourselves.

But more than that: we admit—and it is a very liberal admission—that the mere wearing of a national flag ought to be *prima facie* evidence of nationality; and therefore, in ordinary cases, there neither is, nor ought to be any interference. It is only when some peculiar circumstances of suspicion arise, that any officer ever thinks it necessary to ascertain the fact by closer inspection. We will venture to say, that on all the wide oceans of the globe, no vessel under American colours has ever been questioned by a British cruiser, save in the comparatively narrow limits in which the slave trade is rife; and even within these limits we again say never—but when there is reason to suspect that the American flag is but a fraudulent colour for a ship of a different country.

Practically, this question has grown out of our slave trade legislation and treaties; and the opposition to it has been raised, both in France and America, mainly we believe, by parties who care nothing about the maritime rights of nations, which they very well know are not in the slightest degree invaded, but who are interested in the slave trade, and know, as every body must do, that if the mere wearing a bit of tricolour, or striped bunting, were to protect Spanish or Brazillian ships from any kind of enquiry, all our treaties are worse than waste paper, and the slave trade must become more prosperous than ever.

But, in fact, this is not a mere question of the slave trade; for if the principle now for the first time contended for—viz., that when a

vessel chooses to exhibit, however suspiciously, however fraudulently, a national colour, there is no right of inquiry—if that principle, we say, be admitted, what is to become of the safety of the maritime intercourse of all mankind? Can it be argued that smugglers in the British seas may escape the visit of a custom-house cruiser by wearing an American jack? Will the American Government contend that a *pirate* in the Gulf of Mexico, gorged with the plunder, and reeking with the blood of her citizens, is to escape from one of her cruisers, which may have the strongest grounds to suspect his real character, merely by hoisting the red ensign of an English merchantman? And will she deny that the lives and property of mankind on the high seas would be placed in constant and general peril by so monstrous a doctrine? And yet that is really the *principle* now at issue: for we say, again and again, we have nothing at all to with *bona fide* Americans, and all we want is, to distinguish in suspicious cases, a *bona fide* American from one of our own malefactors who may have disguised himself under that flag.

And what is the objection to the practice?—Why this—that it may subject an innocent vessel to vexation and delay. Now we must first observe, that every one conversant with the sea knows that, in general, ships have no objection to be spoken, particularly in out-of-the-way places; they are, for the most part, well pleased with a mutual interchange of news, or of letters, often of water and provisions, frequently of information as to their local position, or other circumstances connected with their safety, which one ship may possess more exactly than another; and that the delay is generally very trifling.

But this we admit is all mere courtesy, and no ship can have a right to inflict such civilities on another that chooses to decline them; and, no doubt, such visits would sometimes be attended with delay, and therefore vexation. But let it not be forgotten, first, that the inconvenience, as well as the ultimate advantage, is reciprocal between the nations; and that England can have no interest in subjecting her shipping, equal in number and value to that of all mankind put together, to such delay and inconvenience, if the safety of the seas did not require the existence of such a principle—which, though rarely practised, operates as a general control on robbers, pirates and buccaneers. And it is, moreover, not unworthy of note, that the delay and inconvenience, such as they may be, are not only reciprocal between the nations, but between the individual ships, for the visiter is inevitably put to more trouble and delay than the visited—with the additional mortification, if he has made a mistake, that the visiter has had his trouble for his pains; and is liable, moreover, to serious responsibilities for any injurious delay he may happen to cause.

But, after all, there may, and indeed occasionally will be, delays, and therefore some degree of vexation; but so there must be from the execution of *any* law of general surety. Suppose we were to admit—an admission, again, much too liberal—that the mere flag should be considered as a kind of national *passport*. Does any American gentleman, travelling on the continent of Europe, complain, as an infraction of the laws of nations, that his passport is examined at every fortress and frontier, and that the authorities satisfy themselves by inquiries, often very dilatory and vexatious, that the *passport is genuine*, and that *he is the party* to whom the passport, if genuine, belongs? And how, *a multo fortiori*, can a traveller on the waters complain that, in a very few peculiar places and under very rare circumstances of suspicion, his passport should be looked at?

The domestic servants of our own Sovereign, and of all foreign Ministers in England, are free from arrest; but if it were discovered that the royal or foreign livery was frequently assumed by malefactors as a disguise and cover for crime, would it be thought any indignity to our Sovereign or to the foreign Ambassador, that the police, meeting a person wearing their livery in suspicious circumstances, should verify his right to wear it?

And finally, and perhaps most important of all, be it observed