

whether such vessel be American; and if found not to be American, such commander shall give to the captain of the vessel so visited a certificate stating the name of his vessel, the name and rank of the commander, the date of the visit, and the time of detention of the vessel visited,—a memorandum of which visit, with the reason therefor, shall be placed on his log-book; and report the same to the Secretary of the Navy."

Mr. E. continued, that this bill proposed to send a fleet of 80 guns to the coast of Africa, for the purpose of suppressing the slave trade. Now, he contended, that the duties required of the commander of this squadron, by the amendment he had just offered, was absolutely necessary, to enable them to render the least beneficial service. For what purpose were these vessels to be sent here? Not to interfere with the vessels of other nations, but with American vessels. You have, said Mr. E., by your laws, declared the slave trade piracy; and your vessels, therefore, are to act against pirates, and to ascertain whether the vessels they find on that coast are pirates or not. Your object is to suppress this class of piracy; and how can you do it, unless you have the right of visit? If you deny that right, you must take the ground that the flag protects the ship: and if you find Turkish colors on a ship that has the name of the "Sarah Ann, of New York," on her stern, you have no right to visit her. But take the other ground; and if the commander of one of your vessels finds the name of the Sarah Ann, of New York—or of Baltimore, if you please—on a pirate, no flag will protect her.

Every body knew that at this day the flag was no evidence of the character of the vessel. Vessels engaged in the slave-trade would know very well where the American cruisers and British cruisers were; and when they came in sight of the former, would hoist some other flag, and hoist the American flag when they came in sight of the latter. It would be perfectly idle and a waste of money to send our squadron to the coast of Africa, unless they were directed to visit all vessels under the American flag, and assert the right of visit as an American right. It was said that the right of search was found in the law of nations as a belligerent right; and that, not being in a state of war, this right did not exist. What were the laws of nations? Had they derived their force from the contention of nations, or had they derived it from the general consent of nations in amity? But, granting it to be a belligerent right only: the United States had declared war against piracy, and could exercise this right while they were carrying on that war. How did vessels of war act in cases of piracy? Had they not the right to board vessels suspected to be piratical? and was not the United States at war with those who were pirates? But again: *Was the House aware of the fact, that the right had been uniformly exercised by our ships of war? Our squadron on the coast of Africa, engaged in suppressing the slave-trade, had always exercised this right; and so had our cruisers in the West Indies while searching for pirates. He would maintain the right to visit these vessels at all hazards, otherwise our own seas would be covered with pirates. If we refused this right, what would be thought of us in Europe? All Europe was engaged in the suppression of the slave-trade; and could we say to the British that they should not board our vessels for the purpose of ascertaining, not whether they were American, but whether they were British? All distinction was lost in the assertion that there was any analogy between the right of visitation and the right of search. The right of visit was not only essential to the protection and preservation of a lawful commerce, as well as the suppression of the slave-trade, but we could not stand before the world without conceding to it.*

#### ASHBURTON TREATY—RIGHT OF VISITATION.

##### PRESIDENT'S MESSAGE.

To the House of Representatives:

In compliance with the Resolution of the House of Representatives on the 22nd inst., requesting me to communicate to the House "whatever correspondence or communication may have been received from the British Government respecting the President's construction of the British Treaty concluded at Washington, as it concerns an alleged right to visit American vessels," I herewith transmit a report made to me by the Secretary of State. I have also thought proper to communicate copies of Lord Aberdeen's letter of the 20th December, 1841, to Mr. Everett; Mr. Everett's letter of the 23d Dec. in reply thereto; and extracts from several letters of Mr. Everett to the Secretary of State.

I cannot forgo the expression of my regret at the apparent purport of a part of Lord Aberdeen's despatch to Mr. Fox. I had cherished the hope that all possibility of misunderstanding as to the true construction of the eighth article of the Treaty lately concluded between great Britain and the United States, was precluded by the plain and well weighed language in which it is expressed. The desire of both Governments is to put an end as speedily as possible to the slave-trade, and that desire, I need scarcely add, is as strongly and sincerely felt by the United States as it is by Great Britain. Yet it must not be forgotten that the trade, though now universally reprobated, was, up to a late period, prosecuted by all those who chose to engage in it; and there were unfortunately but very few Christian powers whose subjects were not permitted and even encouraged, to share in the profits of what was regarded as a perfectly legitimate commerce. It originated at a period long before the United States had become independent, and was carried on within

our borders in opposition to the most earnest remonstrances and expostulations of some of the Colonies in which it was most actively prosecuted.

Its character, thus fixed by common consent and general practice, could only be changed by the positive assent of each and every nation, expressed either in the form of municipal law, or conventional arrangement. The United States led the way in efforts to suppress it. They claimed no right to dictate to others, but they resolved, without waiting for the co-operation of other powers, to prohibit it to their own citizens, and to visit its perpetration by them with condign punishment. I may safely affirm that it never occurred to this Government that any new maritime right accrued to it from the position it has thus assumed in regard to the slave-trade. If, before our laws for its suppression, the flag of every nation might traverse the ocean unquestioned by our cruisers, this freedom is not, in our opinion, in the least abridged by our municipal legislation. Any other doctrine, it is plain, would subject to an arbitrary and ever varying system of maritime police, adopted at will by the great naval Power for the time being, the trade of the world in any places, or in any articles, which such power might see fit to prohibit to its own subjects or citizens.

A principle of this kind could scarcely be acknowledged, without subjecting commerce to the risk of constant and harassing vexations. The attempt to justify such a pretension from the right to visit and detain ships upon reasonable suspicion of piracy, would deservedly be exposed to universal condemnation, since it would be an attempt to convert an established rule of maritime law, incorporated as a principle into the international code by the consent of all nations, into a rule and principle adopted by a single nation, and enforced only by its assumed authority. To seize and detain a ship upon suspicion of piracy, with probable cause and in good faith, affords no just ground either for complaint on the part of the nation whose flag she bears, or claim of indemnity on the part of the owner. The universal law sanctions, and the common good requires, the existence of such a rule. The right, under such circumstances, not only to visit and detain, but to search a ship, is a perfect right, and involves neither responsibility nor indemnity. But with this single exception, no nation has, in time of peace, any authority to detain the ships of another upon the high seas, on any pretext whatever, beyond the limits of the territorial jurisdiction.

And such, I am happy to find, is substantially the doctrine of Great Britain herself, in her most recent official declarations, and even in those now communicated to the House. These declarations may well lead us to doubt whether the apparent definition between the two governments is not rather one of difference than of principle. Not only is the right of search, properly so called, disclaimed by Great Britain, but even that of mere visit and inquiry is asserted with qualifications inconsistent with the idea of a perfect right. In the despatch of Lord Aberdeen to Mr. Everett, of the 20th December, 1841, as also that just received by the British Minister in this country, made to Mr. Fox, his Lordship declares that if, in spite of all the precaution which shall be used to prevent such occurrences, an American ship, by reason of any visit or detention by a British cruiser, "should suffer loss and injury, it would be followed by prompt and ample remuneration." And in order to make more manifest her intentions in this respect, Lord Aberdeen, in the despatch of the 20th December, makes known to Mr. Everett the nature of the instructions given to the British cruisers. These are such as, if faithfully observed, would enable the British Government to approximate the standard of a fair indemnity. That Government has in several cases fulfilled her promises in this particular, by making adequate reparation for damage done on our commerce. It seems obvious to remark, that a right which is only to be exercised under such restrictions and precautions, and risk, in case of any assignable damage, to be followed by the consequences of a trespass, can scarcely be considered any thing more than a privilege asked for, and either conceded or withheld on the usual principles of international comity.

The principles laid down in Lord Aberdeen's despatches, and the assurances of indemnity therein held out, although the utmost reliance was placed on the good faith of the British Government, were not regarded by the Executive as a sufficient security against the abuses which Lord Aberdeen admitted might arise in even the most cautious and moderate exercise of their new maritime police. And therefore, in my views at the opening of the last session, I set forth the views entertained by the Executive on this subject, and substantially affirmed both our inclination and our ability to enforce our own laws, protect our flag from abuse, and acquit ourselves of all our duties and obligations on the high seas. In view of these assertions the Treaty of Washington was negotiated; and upon consultation with the British negotiator as to the quantum of force necessary to be employed in order to attain these objects, the result to which the most deliberate estimate led was embodied in the eighth article of the Treaty.

Such were my views at the time of negotiating that Treaty, and such, in my opinion, is its plain and fair interpretation. I regarded the eighth article as removing all possible pretext on the ground of mere necessity, to visit and detain our ships on the African coast, because of any alleged abuse of our flag by slave-traders of other nations. We had taken upon ourselves the burden of preventing any such abuse, by stipulating to furnish an armed force—regarded by both the high contracting parties as sufficient to accomplish that