THE PART OF FRANCE AND RUSSIA IN THE SURRENDER BY ENGLAND OF THE RIGHT OF SEARCH. CORRESPONDENCE BETWEEN THE SHEFFIELD FOREIGN AFFAIRS COMMITTEE AND THE LORD ADVOCATE

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VARIOUS

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LONDON:
ROBERT HARDWICKE, 192, PICCADILLY.
June, 1866. *One Shilling.*

CORRESPONDENCE WITH THE LORD ADVOCATE.

No. 1.

Foreign Affairs Committee, Sheffield,
March 26, 1869.

SIR,—In the report of your speech of the 2nd instant., on the Motion of Mr. GREGORY, which appeared in the *Standard*, the following passage occurs:—

"He was surprised to hear the honourable Member complain that we aimed at having declared that enemies' goods in neutral ships should be protected, as if that was new; the honourable Gentleman complained that this would give a right to the neutral merchant to bring actions against the British for capturing goods. Quite true. But that was the law before the Conference of Paris. *The French law was, that 'free vessels made free goods.'* Our law was, that 'the neutrality of the goods protected them under the enemies' flag.'"

This statement, that the French law was, that "free vessels made free goods," has caused this Committee great surprise.

In the French Declaration of War of 1854 the following words occur:—

"His Majesty the Emperor of the FRENCH consents, for the present, to waive a portion of his rights. The vessels of his Majesty will not seize enemies' property on board a neutral vessel."

It appears, therefore, that the French Government held, that by the law of France free vessels did *not* make free goods.

I am directed by the Committee to request that you will be so kind as to explain this difference between your view of the French law and that held by the French Government.

I have the honour to be,
(On behalf of the Committee),
Your obedient servant,
ISAAC IRONSIDE, Chairman.

The Right Hon. James Moncreiff, M.P.,
Lord Advocate.

No. 2.

Edinburgh, April 3, 1866.

Sir,—I am desired by the Lord Advocate to acknowledge the receipt of your letter referring to a passage in a speech made by him in the House of Commons, and to make the following reply:—

It appears from your letter that the Committee, in whose name you write, desire information respecting the grounds on which the Lord Advocate stated the rules observed in France in cases of Maritime capture.

The work most easy of access to which I can refer you is "Wheaton's International Law." In the edition of 1863, by LAWRENCE, you will find at pages 768-9 a note by the Editor, which gives a brief outline of the history of Maritime Law in France, from which you will see that the principle, that "free ships make free goods," has been generally recognised as their rule of Maritime Law since the period of the American War of Independence.

In your letter you refer to a sentence contained in a French State Paper, by which you appear to have been misled into forming an erroneous conception on this subject. I am unable at this moment to lay my hands on the document in question, but I have no doubt that a reference to the context will show that this sentence in the Proclamation was simply the counterpart of one issued by HER MAJESTY respecting the Crimean war. The rights of both Sovereigns were of course equal, whatever their practice had been. But on the general rule previously followed by the French Government there is, and can be, no doubt whatever.

It is not generally desirable that a Member should enter into a discussion upon words spoken by him in Parliament, but the Lord Advocate has desired me to write this letter, as he presumes you wrote to him with the view of acquiring information.

I am, your obedient servant,

STAIR AGNEW.

Isaac Ironside, Esq.

No. 3.

Sheffield, April 29, 1866.

Sir,—I am desired by this Committee to return you their sincere thanks for your letter of the 3rd instant. However, they regret that your opinion should be at variance with the conclusions they have come to and with the authorities quoted in their first letter (and which they deemed and deem the highest and the only authorities on the subject), still they are grateful to you for having furnished them with the grounds on which you have concluded, and beg most respectfully to lay before you, with the frankness which so weighty a matter requires, and which your own act sanctions, the reflections which the inquiry resulting therefrom suggests.

What the law of any country is at any particular time, in respect to the means of coercing an enemy on the only point on which any conflict of law or practice ever existed, is a matter which cannot be supposed to involve the slightest ambiguity. It must suffice to refer to the statute-book, the royal ordinances, or public acts. To these we have referred, on these we have concluded, namely, that at the time in question—the period immediately preceding the Declaration of Paris—the French law authorised the capture and confiscation of enemies' produce, even though embarked in the bottoms of vessels in amity with France.

Your reply maintains, in face of our citation, your assertion in the House of Commons, that the Law of France at the time of the French Declaration of March 29, 1854, forbade the seizure under such circumstances of the produce, manufactures, and property of the enemy.

To maintain such a position, it appears to us that it was of the first and last necessity for you to show that the act of the French Government, quoted by us, was supposititious, and so dispose of our inference; secondly, that you should quote acts of the French Government, proving the law to be such as you asserted it to be. You have done neither. You have not questioned the authenticity of the act cited by us. You have not adduced act or acts establishing the contrary.

You have referred, indeed, to an authority. It is that of a writer of no weight, not even an author on such matters, but an annotator; the note in question not being appended to any passage conveying the same sense in the author commented upon, and this writer not being even a Frenchman, but a United States partisan, moved in his speculations by hostility to Great Britain.

We are constrained, on this *prima facie* view of the case, to come to two conclusions. The first, that this authority has no bearing whatever on the case, being no evidence at all; secondly, that your reference to such a work could only arise from there not having been within your knowledge any quotable authority on your side.

Having carefully perused all that is contained in the note of Mr. LAWRENCE to the reprint of WHEATON's work, we find but a single passage which could have been in your mind when you referred us to it. That passage is as follows:—

"The principle that free ships make free goods has, since the American war, been the generally recognised rule of French Maritime Law."

Take this assertion for what it is worth; it does not amount to asserting that "The Law of France was free bottoms make free goods." All that is attempted by this partisan seeking to insinuate conclusions derogatory to the employment of England's strength, and to stay up these conclusions by an assumption of the existence of a practice in France available for his argument, is that, *generally*, the *recognised* rule of France is so-and-so. This ambiguity of expression does not belong to writers whose words are worth quoting, except in so far as to show the dishonest and insidious nature of the means employed for perversion; but, after all, the sense is clear that the Law of France varied, and that, therefore, what it was at any particular time is simply a matter of dates—dates not to be determined even by the year: you have to come down to the month, and to the particular day of the month, to know what the Law of France was at any particular time. Mr. LAWRENCE does not say that at the time of the Russian War the Law of France was "free bottoms free goods," and, what is more, he could not have made that statement, at least in the work before us, for the passage quoted is in the midst of a narra-

tive of the mutations in French Law, and which, garbled and falsified as it is in almost every point, concludes with the assertion that at the end of the period under review the doctrines of the Russian Armed Neutrality had triumphed over the laws alike of England and France. Mr. LAWRENCE says:—

"Russia, during the *exceptional period* of the French Revolution, especially in 1793 and 1801, deviated widely from that system of which it was the *glory of the Empress* CATHERINE *to have been the champion*, and which is now sanctioned, and even extended beyond what was established in the respective Conventions of Armed Neutrality by her great belligerent adversaries."

This is, at any rate, all the sense that can be made out of these pages of print, where special pleading is contained in each statement, insinuation substituted for argument, and contradiction for conclusion.

The authority of the work consists in the name of the Author, but that author has not a word on the subject; he narrates the changes in the French law that had taken place, but it did not occur to him, as it occurred to no one, up to the time that arguments were to be found to justify the act and to conceal the object of the English Government in waiving the means by which alone Russia could be coerced at the moment at which England was declaring war against her—we say up to that moment no one ever heard or thought of the proposition, "The Law of France is free bottoms, free goods." If the law of France was spoken of it was, of course, in reference to its date. No difference could possibly arise on such a subject, for every one knew, or at least those who cared could know, at what dates France had joined Russia in maintaining that free ships made free goods, and at what dates she had maintained the contrary. No one could assert a general proposition on the subject; no one was called on to controvert a general proposition, and no discussion could arise. No discussion had arisen, no discussion arises, none can arise now, except in so far as now there are parties interested in putting such statements forward, which are then easily accepted by others who find therein an explanation of that which otherwise is to them inexplicable.

Giving you the full benefit of Mr. LAWRENCE's recital of the changes in French Law, out of which he constitutes the "generally recognised rule of France," it will amount to ten years (1783 to 1793) out of about 1000 years, if we take, as the limits of time, CHARLEMAGNE on the one hand, and March, 1854, on the other; but then it has to be observed that of these ten years the whole period, with the exception of three months, was one of peace; so that the application of the "generally recognised rule" in time of war, when alone that rule can apply, is positively reduced to three months, these three months being just the time requisite for the Government of France to discover that it was impossible for it to carry on war under any such rule. Even these three months are apocryphal. We do not find in the decree of the 14th February, 1793, anything but the assertion of the "ancient laws"—a term, to say the least, equivocal.

The last acts upon the subject by the French Government were

the Berlin and Milan Decrees, when, passing beyond the rule of confiscating enemies' goods when in the charge of neutrals, they went the entire length of destroying them after they had become French property. The Act which preceded these decrees is that of May 22, 1803, of which the following is an item:—

"ART. LIII.

"Shall be *also* good prizes whether the vessels or their cargoes, in whole or in part, the neutrality of which shall not be justified conformably to the regulations or the Treaties."

These are the legislative measures which preceded the fall of NAPOLEON, they were followed by the Treaties of Paris and Vienna; so that the Law of France, being in perfect harmony with that of England, nothing had to be stipulated on the subject, as nothing was stipulated; and therefore, on the suspension of these laws in March, 1854, the present Emperor of the French properly and necessarily described that Act as a waiving of the rights of France.

We subjoin, as an enclosure, an analysis of the narrative of Mr. LAWRENCE.

Our interest in the statement thus analysed is derived from the use that was made of it in 1854, when England and France waived the Right of Search during the Crimean War.

It was argued by Sir WILLIAM MOLESWORTH that as the French law confiscated all goods in an enemy's ship and none others, and as the English law confiscated only enemy's goods, but did so wherever they were found, it was necessary to an alliance between the two nations that their laws should be assimilated. This, he contended, was satisfactorily accomplished when France gave up the right of seizing neutral goods in Russian vessels, while England gave up that of seizing Russian goods in neutral vessels. Thus the alliance against Russia consisted in making safe not only Russia, but any neutral who was willing to give her aid. Sir WILLIAM MOLESWORTH drew a graphic picture of a neutral ship visited by a French one and courteously suffered to pass, and of the terrible sequel of its capture by an English ship. He even ventured to heighten the effect of this picture by drawing another of a Russian ship whose neutral cargo England did not touch, being afterwards seized by a French one. Had it been true that France could seize the goods of a neutral in a Russian vessel, this faculty would have effectually supplemented the English faculty of seizing Russian goods in a neutral vessel. The English armament was sufficient, especially if letters of marque had been issued, to stop all neutral vessels laden with Russian produce, while the French would have punished every neutral who trusted his property to a Russian bottom. Thus the Russian trade would have been doubly secure of annihilation.

The expression of indignation and surprise at such a statement being made in the House of Commons by Sir WILLIAM MOLESWORTH, though it may appear strange to the ignorant, cannot appear astonishing to any one who knows the truth. But Sir WILLIAM MOLESWORTH's assertion could carry no weight. He was neither a lawyer nor a diplomatist, and though accustomed to heavy literary

labour in classical or philosophic researches, yet on this occasion he did not take the trouble to ascertain the truth of the statement he made, but openly said, "I am informed," &c. Yet it is this very statement of Sir WILLIAM MOLESWORTH'S, avowedly second-hand, yet without specific authority, that is seized on by Mr. LAWRENCE to slip into a posthumous edition of a work of reputation and character in order to confer upon the misrepresentation an authority to which it had no claim.

We cannot, then, wonder at Mr. URQUHART'S saying in his letter to Mr. GREGORY, that his eyes turned round in his head when he saw your assertion in the House of Commons on the 2nd of March. For, Sir, that gentleman had explained to us during the war, and in the year before the Declaration of Paris, the character of the decrees of France on the Right of Search, showing that it was from France that England derived her law on that subject, and explaining the purpose of the waiving of the Right of Search, so that we were not surprised when it was surrendered at the Peace. For, of those things that are brought about by human management, nothing can be understood at the time it happens, if it is not understood before it happens.

Mr. URQUHART then told us not only that that surrender would be made, but that it would be accepted. His examination (of which I enclose a copy) lasted two days, and every point of the subject was gone into. I was Secretary of the Committee which investigated the matter, and, myself, put to him those questions the answers to which left us from that moment without the possibility of misunderstanding the purpose and character of that surrender.

The defence of Sir WILLIAM MOLESWORTH which Mr. LAWRENCE thus adopts, was in substance, that this waiving of the Right of Search was a "European necessity," to which England had to submit, just as in 1852 the change in the Danish Succession was imposed on the Danes as a European necessity, while the Powers who consented to it did so on the grounds that it was desired by the people of Denmark. On this point, however, we find an explanation in your letter, which commands our perfect concurrence. Speaking of the Declaration of the Emperor of the FRENCH, you say: "I have no doubt that "a reference to the context will show that this sentence in the Pro- "clamation was simply the counterpart of one issued by Her MAJESTY "respecting the Crimean War." No doubt the sentence in the French Proclamation is the counterpart of that in the English one, for it is exactly the same. The practice of France when our enemy, has always been founded on that of Great Britain, and it is equally so when she is our ally. But you look for an explanation of the sentence in the context. The sentence itself is a declaratory and enacting one. It enunciates the law, and declares its suspension. We cannot, therefore, understand the application you make in reference to context. A sentence intervening between other sentences mutually required to convey the sense, being taken separately and any conclusion being founded thereon, it is right and necessary, in combating or even in testing any inference from it, to refer to the context; but