

Confidential.

Downing Street,  
4<sup>th</sup> January 1855.

Sir,

With reference to your  
despatch No 39 of the 28<sup>th</sup>  
of August last I transmit  
to you the copy of a despatch  
which the Earl of Clarendon  
has addressed to Her Majesty's  
Minister at Washington  
directing him to bring  
under the notice of the

Governor Rennie

to to to

Falkland Islands.

no  
22 Decr. 1854



United States Government  
the conduct of Captain Lynch  
on the occasion of a second  
visit which he paid to  
the Falkland Islands to  
investigate the circumstances  
under which Captain Bernese  
an American Subject had  
been imprisoned for a  
breach of the laws of the  
Colony.

I have the honor to be

Sir,

Your most obedient  
humble servant.

G. Grey



Stanley  
June 20<sup>th</sup> 1862

Sir, The position which we respectfully occupy the one as the Officer Commanding the Troops, in Garrison, and the other as Colonial Chaplain ministering in Spiritual things to the whole Colony, must plead as our excuse for intruding upon your Excellency's attention respecting matters not immediately connected either with the Military or Ecclesiastical departments.

2 We should not have presumed to have made suggestions respecting the Legislation of the Colony as affecting the Sale of Spirit, & Liquor, had we seen any appearance of steps being taken to avert the evils under which the whole Colony Civilian & Military are labouring.

3. It is not only that the number of Public Houses have been increased from four to seven within the last few months, a number almost unprecedented in any other part of Her Majesty's Dominions, for a population of very little more than 250 adults, but that the

To His Excellency

Governor Moore

(Signed)



of wholesale by which any quantity of intoxicating Liqueur exceeding two gallons, can be obtained from the wholesale dealers on credit, entailing an amount of misery and ruin on families, threatening much eventual destitution, that impel us to lay the matter most strongly before your Excellency.

4 We are aware that your Excellency is anxious in all these matters to inaugurate such measures as may avert the evils which are so apparent, with a due regard to the liberty of the Subject.

5 The most attentive consideration which we have given to the subject have led us to the conclusion, that many men & women who have not the money to obtain a pint or a quart of Beer, Wine or Spirits at the Publicans who are prohibited by "Section 11" of the Spirit License Ordinance" from giving credit, may yet obtain any quantity exceeding two gallons on the most unlimited credit. The most natural consequence is, that even those who may be inclined to live soberly, have the double temptation placed before them of credit for, and access to, an



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amount of intoxicating Liquor  
never within the reach of their class  
in any part of Her Majesty's  
Dominions when the fact of the  
extreme cheapness of these Beverages  
is taken into consideration.

We are well aware that our  
motives in drawing your Excellency's  
attention to the whole subject of  
the "Spirit Licence Ordinance" are  
liable to misconstruction, that many  
prejudices & interests will be offended,  
but though in a small community  
like ours, all this is to be very  
much deprecated, we feel that  
in urging the Amendment of the  
"Spirit Licence Ordinance of 1833" we  
are only performing a duty which  
we owe to Society as good citizens,  
and to your Excellency as loyal  
Subjects of Her Majesty whose  
Representative your Excellency is.

7. We therefore most earnestly  
urge your Excellency to consider  
whether it is not advisable

1. "That all Licences for the  
Sale of Liquor by Wholesale or  
retail shall last no longer than  
the 1<sup>st</sup> of September next. That  
such Licences whose Licences  
may not be expired at  
that date shall receive a return of



(13)  
the portion of duty paid by them in  
excess. 2. That for the future on  
the 2nd day of September <sup>in each year</sup> ~~next~~, such  
persons as may wish for wholesale or  
retail licences may (after giving  
public notice of their intention  
to apply for such licences at  
least 14 days before,) appear  
before His Excellency the Governor  
in Executive Council by petition  
and may receive such licence  
for one year under such conditions  
as may be laid down by the  
said Governor in Council.

But before such petition  
shall be considered the  
following certificate must  
be produced (a) A Testimonial  
under the hand and seal of  
the Chairman of the Court of  
Justice in the Colony, that the  
Petitioner has during the preceding  
12 months not been guilty of  
any offence against the  
Peace or order of the place & is  
in all respects a reputable person  
to receive such a licence.  
B. A recommendation that  
such licence shall be



granted signed by at least  
 four of the freeholders of  
 Stanley residing there, and of  
 whom two shall be justices of  
 the Peace not deriving any  
 pecuniary advantage in any  
 shape from such proposed  
 Licence. 3. That at such meeting  
 of the Governor in Council for  
 granting Licences, any resident  
 in Stanley being on the Jury  
 List, or any Justice of the Peace,  
 Officer in Her Majesty's Army  
 or Navy, or Person in Holy Orders,  
 or Government Officer of the  
 first Class may be heard either  
 in person or by Counsel or  
 by Counter Petition, against  
 such Licences being granted or <sup>renewed</sup>.  
 4. That such Licences shall be so  
 drawn up, that the Governor with  
 the advice & consent of the  
 Executive Council may insert  
 any fresh conditions as may  
 from time to time be considered  
 necessary for the preservation  
 of order & of the well being  
 of the Colony and Colonists



That the Governor in Executive Council may re-enact any Clause or clauses of the present Sp. Lid. Ord. of 1853 or enact any Clause or clauses of any Act of Parliament relating to the Sale of Beer Wine or Spirits in the United Kingdom, <sup>by Proclamation</sup> But that in future ~~any~~ under any Circumstances the clause in the present Ordinance prohibiting retail on credit, either directly or indirectly by the pretended loan or sale of goods or otherwise, or the taking of anything except money, shall be applied to wholesale as well as retail dealers, under the penalty on conviction of £50 absolutely, one half of which fine shall go to the informer. Provided always that a third such fine shall deprive the offender of any right to hold any licence hereafter.

8. The main object of any fresh Legislation respecting this subject shall,



se the more  
desired since  
certain  
id hand  
assistance of  
Colonial Office  
Colonies

we conceive he, to place a check  
on granting or renewing Licences,  
either wholesale or retail,  
without due publicity and giving  
a fair opportunity of all objections  
being heard and considered, before  
a Tribunal not judicial but  
executive. That such Legislation  
should give ample powers to  
the Governor in Council from time  
to time to check drunkenness  
by any restraining proclamation  
that may be necessary, to stamp  
on our 'Ordinances' the determination  
of the Legislature of the Falkland  
Islands to regard Drunkenness as a  
Crime and a Disease.

9. But above all, the most  
important point we conceive  
to be, the putting a stop to  
credit being given for  
Intoxicating Beverages under  
any circumstances, either  
by wholesale or retail and that  
too to the Retail dealer as well  
as the consumer.



We implore your Excellency,  
 thus by energetic measures to  
 mark the period of your Government  
 by the repression of that vast  
 amount of intemperance which  
 unhappily prevails in our  
 community & which has already  
 exalted in some twenty or  
thirty men and women being in  
 a state of mental imbecility -  
 We have the honor to remain,

Your Excellency's  
 Obedient Humble Servants

St. Mary's Capt.

Commanding Troops  
 Charles Bark. M. C.

Colonial Chaplain &  
 Member of the Executive Council



July 3<sup>rd</sup> Court-house  
Stanley

Si

I beg to acknowledge the receipt of a communication from Your Excellency enclosing a Paper signed by Captain Molony and the Colonial Chaplain on a subject which has been frequently discussed by Your Excellency & myself - viz the excessive use of liquor in the Colony, & requesting that the Spirit Licence Ordinance might be altered as to the credit being given by the two Wholesale Dealers, & further to transfer the licensing power from the Bench of Magistrates to the Executive Council -

I am not aware that the ~~vice~~ referred to is more prevalent now than before my arrival nearly a year ago; I trust that Your Excellency will apply to the Colonial Surgeon respecting

S. J. Governor Moore  
L. L. L.



respecting the 20 or 30 ~~cases~~ <sup>which are</sup> cases of  
 mental imbecility from drinking, some-  
 what loosely mentioned in the Document.

before me; and I must request Your  
 Excellency to desire Captain Hurler to  
 furnish you for the information of the  
 Home Authorities with a return of the  
 cases of Drunkenness in the Force  
 under his command during the last  
 year, as I ~~have~~ say from the Police  
 Records & various other sources, that  
 as far as the Civilians are concerned  
 there has been a marked improvement  
 during that period.

On referring to the Police  
 Records for the ~~past~~ six months, I find  
 that ten cases have come before the  
 Court for being Drunk & Disorderly  
 or Drunk & Incapable; of these two  
 were of sailors in the port, one only  
 was that of a Colonist, & all the  
 rest were the wives of the soldiers  
 stationed



stated here -

With regard to the credit given by the two Wholesale ~~Dealers~~, I have never had any items of the sort brought before me, ~~but~~ and after making the proper inquiries, & examining closely the Ledgers of the ~~of these~~ Houses, I can report that very little is sold on credit, & I am astonished that so small a quantity should be disposed of altogether to the Colonists, when it is remembered that one Gallon of ~~the~~ inferior Spirits at most of the Retail Dealers, costs nearly as much as two un-mixed Gallons at the Wholesale prices -

The proposed alteration in the Ordinance might possibly increase slightly the large profits of the two Retail Dealers who are the nominal Church-wardens, & who may probably have furnished the facts (if I may call them so,) contained in this document; but it would infallibly <sup>create</sup> Depôts for the Spirits which would be smuggled from the Vessels in the Harbour, & ~~for~~ what are termed the "Sly Grog-Shops," which it has been so much the object of the Magistrates to hold in check -

Yr Obedtency



Your Excellency is well aware that

with the enormous wares & the extreme cheapness of spirits in this Colony, it hardly requires the total dearth of any amusement to induce our peculiar population to take liquor in excess, & we have reason to be sincerely thankful that crimes of violence are at present almost unknown.

With regard to the suggested transfer of the Licensing power to the Executive Council, it is not probable that so unmerited a slur will be thrown on the Bench of Magistrates, as to propose taking away a <sup>duty</sup> function entrusted to them wherever they exist, & which could not possibly be so well discharged by any other body in these Islands; & I shall not here notice an allusion to the performance of their <sup>business</sup> ~~duties~~ some six months ago, which was approved by Your Excellency, & fully justified by subsequent events.

With the limited machinery here, this Vice can be only further arrested by high moral influence among the people, & the want of this may be traced to the fact (to Your Excy may rely on my statistics) that considerably more than one-third of the Force under Captain

Molony



Malony, & a small fraction less than that large proportion ~~among~~ in the whole colony, are Roman Catholics, who have been for years without any spiritual help, & ~~whose~~ of whose Religion, I fear may be summed up, as far as the great majority are concerned, in a vague hatred of Protestantism, & a partially kept determination to stand by each other -

When the important Dissenting element is also considered, I feel it my duty to entreat Your Excellency to urge on the Home Authorities that a large part of the Colony should not be left in their present fearful spiritual destitution; there can be no doubt that a devoted Roman Catholic Priest, & one or two earnest Dissenting Ministers would do far more good to the community than any interference with the existing Ordinances -

It may be now fashionable to call Drunkenness a Disease, but no Human Law can term it a crime for a civilian to intoxicate himself in his own house without disturbance; if Captain Malony, ~~finds himself unable to~~ ~~restrain~~ with whom I have worked so frequently

transfamilies  
new 1862.

59.

Catholics obtained

de. 63..

Off. Ann. '62

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171 dist

from the M. J. J. J.



frequently & so earnestly on this very question,  
 (& of whom I think I may complain that he should  
 have set his name to the present Document  
 without communication with me,) should find  
 himself unable to restrain this vice among his  
 force with slight punishments, & does not  
 find the assistance I have always rendered  
 him sufficient, I would suggest that he should  
 exert more fearlessly the stringent means at  
 his disposal; & I hope it will be taken  
 in good part if I say that it would  
 be much better for the Colonial Chaplain  
 instead of amateur legislation, to use the  
 influence he may have with the portion of  
 the Colony under his religious charge, &  
 I think Your Excellency must agree with me  
 that by that means he will be more likely  
 to effect a radical improvement in this  
 difficult matter, than by any crude inter-  
 ference with the Magisterial or Legislative  
 duties -

I must



I must respectfully request  
 Your Excellency to transmit this Despatch to  
 the Colonial Authorities that I may do my  
 part in recommending what I conscientiously  
 believe to be the sole remedy for the  
 crying evils of Drunkenness & practical  
 Heathenism which exist in this Colony.

I have the honour to be

Sir

Your Excellency's obedient servant

W. Woodlake

Chairman of the Courts  
 member of the Councils



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N<sup>y</sup>  
Parsonage, Stanley, Sep. 24. 1862.

Sir, Your Excellency has been good enough to comply with my request of the 12<sup>th</sup> inst. by forwarding me the Stipendiary Magistrate's production. The substance & spirit of his report, causes me to regret having troubled Your Excellency on the subject, the Stipendiary Magistrate is so illogical, and intermixes into questions, so distinct from the question at issue, that did I not fear that at a future period, some of his assertions might pass without contradiction, I should have been quite content to remain silent, convinced that the wire & temper of his remarks justify one in being comparatively indifferent about explanations or conciliation with one, who privately & publicly has forgotten the courtesy due to me as a Clergyman & a Gentleman. (2.) The main object of my first addressing your Excellency on the subject of the sale of intoxicating liquors was the increase in the number of dealers in those Beverages. That drunkenness does produce most deplorable results in our small community, the fact <sup>will prove</sup> that of the 35 funerals I have had during the two years & nine months I have been in the

Yr Excellency  
Glover Moore M.D.  
L.C. L.C.



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Settlement, 29 have been those of settlers,  
& from that number 13 of the deaths may  
without any lack of Christian Charity be  
attributed to Drunkenness either directly  
or not very remotely. It would be painful  
to the feelings of survivors to place the  
names in a Public document, but I am  
prepared to afford them to your Excellency,  
privately & confidentially. Of the 20 or 30  
people Capt. Involong & myself estimated  
as being or having been in a state of mental  
imbecility, the same tenderness to the feelings  
of others may prevent the Colonial Surgeon,  
from specifying names, but I can assure  
your Excellency that I have been called  
upon to minister to some 8 or 9 people  
in the Settlement suffering from Delirium  
Tremens, if we add those cases to some  
of the 13 who have unhappily perished in  
the midst of their self indulgence, our  
vague number will not be found far  
wrong, nor can Mr. Goodlake claim much  
credit for the decrease of drunkenness, it is  
decreasing but by the operation of causes which  
Mr. Goodlake has lost sight of; and in spite  
of those temptations which he has most recklessly  
multiplied among our small population  
with only one Constable, acting under the orders  
of ~~an ignorant & unprincipled~~ Mr. Goodlake, ~~in~~ ~~the~~ ~~settlement~~  
~~the settlement~~, I am not surprised that



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there should be so few charges of  
Drunkenness. I am however convinced  
of one fact, that there have been a  
great many more cases at the Police  
Court since the date of my letter to your  
Excellency Jan 20.

3. Mr Goodlake as well as  
myself have been partially favoured  
with Mr. Dennis's account of credit  
given for Liquor, nothing however is  
said of the Falkland Island Company's  
large dealings in this way, but as far  
as those Houses are concerned the  
arrangement mutually entered into of  
stopping the credit system in certain  
cases must most materially lessen  
the evil, it is with regret I find that  
another Wholesale Licence has been  
granted without any guarantee being  
taken to enforce the same excellent  
arrangement.

4. Mr Goodlake's information  
that the amendments in the "Spirit  
Ordinance" were proposed to "increase  
the large profits of the Auctioneers"  
who happen to be Publicans, I must  
deny most strongly. So far from  
there being any foundation whatever  
for it, Mr. Churchwarden has reaped  
an immediate & large profit in the



increased value of his freehold which Mr. Goodale licensed as the "Rose" and his intended application for a Wholesale Licence, made him from the first opposed to my own views on that subject. Since the 31<sup>st</sup> of July Mr. Good has obtained his Licence. Mr. Churchwarden Isaac Smith though complaining of the number of opposing Houses, did not as he contemplated retiring from his Business furnish me with any facts, he has since transferred his Licence to two respectable well-conducted men, both of whom I believe are Aliens. I trust your Excellency will not pass over the insinuating innuendo against two Colonists who were duly chosen in Vestry, to act as Churchwardens, an insinuation which would hardly be tolerated in a Barrister from beating a witness at some County Petty Sessions, & which comes with peculiar ill grace from the Chief Judicial Officer of the Colony, <sup>who</sup> will never retain the respect of the Colonists, unless he be more careful in his mode of expression & less violent in his dictum both publicly and privately.

5 Your Excellency is aware that



in order to wean our peccator population  
from habits of drunkenness, I have  
endeavoured to open evening classes,  
we have had lectures, concerts &c. and  
a Mutual Savings Bank has been  
commenced, which has proved most  
successful, but with the exception  
of your Excellency's most energetic  
support, neither the Stipendiary Magistrate  
nor any other official has taken the  
slightest interest in these matters.

The Police Court opens three more  
Public Houses, to counteract any good  
I may be endeavouring to accomplish.

I view a that increase of the  
number of Public Houses from 4 to 14  
for our population of 250 adults, as a  
most questionable course, I knew  
that Regulations & Laws had been  
unobserved in thus giving licenses  
to three more Publicans and though  
Mr Goodlake may say that the  
performance of the business of his  
office, on the occasion alluded to,  
met with the approval of your  
Excellency, I may be allowed to  
express a grave doubt as to the



good grounds of his self approbation.

When Your Excellency did me the honor of placing me at the head of the Commission of the Peace for 11 months, I made an arrangement that all licences were to be given only on one fixed day in the year, as is customary in England, this arrangement was most unceremoniously disregarded: and thus, there was a degree of secrecy observed as to the licenses granted which I know Your Excellency disapproves. The arrangements entered into by the Publicans, which Your Excellency refers in your letter to me no 60 13<sup>th</sup> March 1861, were at first wholly unattended to, & the 1<sup>st</sup> clause of the Spirit-Licence Ordinance respecting summoning & meeting the Justice, was I am informed quite disregarded. When I remember that Your Excellency before Mr. Goolake's arrival in the colony, over & over again, expressed to myself as Deputy



Chairman of the Courts, your <sup>14-5</sup> anxiety  
to diminish the number of the then  
existing Public Houses (4 only) by  
withdrawing the Licence from the  
Houses in the Back of the Settlement.  
When I have heard your Excellency  
over & over again express your  
dis-approval at any rate at a  
Licence having been granted to a  
man who keeps a Brooding House,  
for Sealers & Sailors, & whose  
Antecedents are doubtful, I  
must confess myself at a loss  
briefly to the affront which could  
claim your Excellency's approval  
of such reckless proceedings.

7. It is with sorrow that I find  
that instead of Mr Goodlake, using  
"the high moral influence," which his  
position would enable him to exercise,  
for arresting a very crying evil, the  
only remedy he can devise is  
recommending the introduction  
of a "Devoted Roman Catholic  
Priest, and one or two earnest  
Dissenting Ministers," I consider



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This remark if not insulting to St. His  
Representative whom it is addressed,  
the most childish I have ever seen  
poured by a person of ordinary  
education.

8 When Mr. Goddard sought his  
Statistics from Seyt. Toole and a  
"Mr." McGarrell, it would have been  
as well to have made them more  
complete, thus for instance of the  
63 Romanists claimed by Seyt. Toole,  
there are nine soldiers including  
two Seyts) three only of the nine have  
wives of their own persuasion. Seven  
protestant soldiers are married  
to Roman Catholic wives, thus there  
are only 19 Roman Catholic Wives  
in the whole 63. Of the Roman Catholics  
among the Colonists at large it is  
more difficult to speak, since  
with the exception of two families  
among the civilians & three families  
among the Soldiers, all attend my  
Public Collections on Wednesdays,  
Fridays & Sundays, & all avail themselves  
of my Spiritual Ministations which  
I am ever ready to afford them -

9 It is gratifying to me to be able



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To assure your Excellency that not more than 20 adults, residing in the settlement habitually absent themselves from the House of God. Consequently until Mr. Goodlake's advent to these Islands, I never heard of any important Dissenting Elements which however I must do him the justice to say he is doing his utmost to call forth.

10 I should be very glad if the Romanists had a spiritual director of their own, my peculiar position here prevents my taking any active steps on their behalf, as long as they apply to me, I shall be ready to do my utmost for them. It seems scarcely fair however, not to mention H.M.'s Government, that the Soldiers will shortly return home, & that then there would be a very small sphere for the "Devoted Roman Catholic Priest", in which he could labour, and the "one or two earnest Dissenting Ministers" would I presume apply themselves to Mr. Goodlake: who represents I presume in his own person "the important Dissenting Element".



I shall not trouble myself to say anything about the Sypendary Magistrate's proposal that Capt. Molony should best more fearlessly the stringent means at his own disposal for the suppression of Drunkenness in his own Corps, I leave that Gallant Officer to manage his own affairs, but I may remark that I do not consider "Amateur legislation" on my part, or "Crude interference with Magisterial or Legislative Duties" uncalled for when they take the shape of merely calling attention to crying Evils & making suggestions for their redress.

As Mr. Goodlake speaks of the practical Atheism, which exists in this Colony, were it not for the ill will, which this unfortunate expression would create, a good deal of good might be done, by Publicity being given to the whole correspondence on this subject, & thus the whole truth would be elicited.



But I deny that practical Heathenism<sup>ism</sup> exists, excepting among those who habitually absent themselves from the House of Prayer, desecrate the Day of Rest, and by the use of violent language, and by their want of Christian Courtesy, place themselves in the Category of "practical Heathens". I deny that as a Body the Roman Catholics here are such, & I have too much regard for my own particular Congregation to imagine that even Mr. Goodlake, intended thus to designate them.

13 It will probably be considered, by your Excellency, more conducive to Peace & good will, if the whole Correspondence rests here. I only wish that this letter may always accompany Mr. Goodlake's, and I shall be quite content if security be taken that at any



rate no more Public Houses are Licensed,  
and that Sobriety be maintained as  
well as at present.

I have no objection to this  
Letter being sent to Mr. Goodlatte,  
in fact if your Excellency would do so,  
I think it would be as well, if Mr.  
Goodlatte desires his to be forwarded  
to the Secretary <sup>of State</sup>, I must move your  
Excellency to forward this, - I have  
placed in the Record Book  
kept by the Colonial Chaplains a  
copy of the whole of this correspondence,  
to show my Successors in my  
office that I did my best to stem  
the temptations to Drunkenness  
existing among the people, & denied  
an unfounded charge brought against  
a large proportion of the Community.

I have the honor to be Sir,

Your Excellency's obedient, humble servant,

Charles Bull - M. A.  
Colonial Chaplain

Member of the Legislative Council



For Bourse  
Sept: 18<sup>th</sup> 1862.

Sir

I have had under my consideration  
your letter of the 28<sup>th</sup> Inst. and also  
the explanatory one of July 2<sup>nd</sup>

As I understand from Mr.  
Goodlake that Capt. Molony has  
already seen his report. I feel  
that in justice to yourself  
you should have the opportunity  
of remarking upon it.

There are many difficulties  
in legislating against Drunkenness  
and I fear that no measure  
could be carried by my Council  
which would prevent the  
Drunkard obtaining intoxicating  
drinks as long as he had the  
means.

I shall continue to give  
my earnest attention to the

Rev. C. Bull M.A.  
Colonial Chaplain &  
Member of the Executive Council.



whole subject, and beg to thank  
 you <sup>both</sup> for your suggestions, although  
 I am not prepared to carry them  
 out to their fullest extent

I am compelled to forward the  
 Stipendiary Magistrate's letter of July  
 3<sup>rd</sup> but in doing so. I must  
 be understood as far from  
 considering in all his remarks  
 especially those which are of a  
 personal nature

I am Sir  
 Your obedient servant

J. H. Moore  
 JH



Stanley Banacks  
October 22<sup>nd</sup> 1862

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Sir,

It is with extreme regret I feel myself obliged to bring the following circumstances of a matter, which at first sight may appear to be purely personal, officially to your Excellency's notice, and I should not have troubled your Excellency with this affair but my position as a military officer obliges me to submit the case for your investigation as Commander in Chief in these Islands as well as Governor.

Yesterday about two o'clock in the afternoon I was walking on the main road of Stanley with my two boys and accompanied by two dogs, when first at that part of the road between Mr Bull's house and the heap of coals belonging to Captain Smyly one of the dogs ran after some geese which crossed the road and ran down towards the water the second dog ran after the other immediately and I lost sight of both but called and whistled to them to come back, as they did not return immediately, I sent one of my boys to look after them as I feared one of them which was given me by the mate of the ship which was lately burnt at sea would run away towards the

A. L. The Governor  
Govt. House



Falkland Islands Company's store where  
 he had been kept some time on the College of  
 the sick sailors, I never thought more of the  
 geese as I had often before seen the dogs  
 chase them a few yards and when they took  
 to the water leave them. I then was waiting  
 for my boy to return when I saw Mr  
 Bailey the Surveyor General walking  
 slowly towards me. I joined him as he  
 came up and said good morning Bailey  
 and something about the weather. Mr  
 Bailey in place of saying anything civil  
 in return to my friendly salutation said  
 in a kind of mumbled tone something  
 as well as I could make out "you  
 will have to pay for that goose" I  
 said what goose? he then led me  
 to understand that my dog had killed  
 one of the geese. I then went down  
 with my boy who said the goose is  
 dead and I saw a goose lying dead  
 believing the goose to be the property  
 of Hecking the jailor I immediately  
 went to his house told him the circumstance  
 asking were the geese there his, he said  
 he thought so, and accompanied me  
 to look; we walked through the Dock  
 yard, and coming to where the foot  
 boats are painted & spanned, I  
 saw Mr Bailey who on our approach



Commenced without a word being said to him or his opinion asked saying, "if the goose were mine I should not be satisfied with payment," in order as it appeared to me to make some sort of disagreement between Hooking and myself. The man did not appear to Mr Bailey and appeared quite satisfied with what I said which was that I would pay him whatever he considered the bird worth he said he had refused ten shillings before. I said I will then give you ten shillings. Mr Bailey then began again speaking in a manner so offensive and unlike that in which gentlemen are accustomed to address one another that I could no longer submit to it, and said

"Mr Bailey what do you mean by speaking to me in this manner ~~or words to that effect~~ I won't allow to speak to me in this manner or words to that effect. he then replied in a most bullying manner & tone then if you want, then leave this or in other words ordering me out of the Government Dock yard. I said I should not leave it as I had as much right there as he had, as he appeared to me to think that I had seen the dog kill the goose. I said I did not - he said you did giving me the lie direct by implication



Now I have had no personal disagreement  
with Mr Bailey and Mr Bailey had  
nothing in the world to do with me  
was not asked to interfere on the subject.  
I had done all in my power to make up  
the loss to the owner of the bird who  
appeared satisfied, therefore I must  
as an officer holding her Majesty's  
Commission, urge on your Excellency  
the fact that Mr Bailey the Government  
Surveyor General has most inhumanly  
interfered with me, and behaved  
in a most insulting and annoying  
manner without the smallest  
provocation on my part. I have  
no ill feeling to Mr Bailey but  
I cannot submit to be treated thus  
by him and he an officer in the  
service of Government without at  
least making an appeal to your  
Excellency as his and my  
superior.

I have the honor to be  
Sir

Your Excellency  
Most Obedt Servant

Wm. L. Loring

Commandy Surgeon



Government House  
October 23<sup>rd</sup> 1862

Sir

I have to acknowledge your letter of yesterday's date, It is with regret that I hear of the difference between Mr. Bailey and yourself.

You have done quite right in submitting the matter to me under the 103 Section of the Mutiny Act.

Mr. Bailey's attention having been drawn to the subject, I have the pleasure of informing you that he has stated he "had no intention of doubting your word" "nor of presuming to order you out of the Dockyard" - I trust that you will not allow expressions used in moments of irritation to

Capt. J. M. Molony  
Commanding F.R.C.

Intercept



interrupt the friendly feeling  
 which I have understood have  
 hitherto existed between Mr  
 Bailey and yourself. I am  
 sure he regrets the expressions  
 of which you complain. The  
~~tone~~ and manner of using them  
 seems to have given the real  
 offence.

I have the honor to be  
 Sir  
 Your obedient servant  
 Thos. P. Moore  
 Esq.



Confidential

No 41

Goodhouse  
Falkland Islands.  
October 31<sup>st</sup> 1862

My Lord Duke.

I have been requested to  
enclose the accompanying documents  
to your Grace.

I must acknowledge that I  
am not prepared to admit that  
the Colonial Surgeon is entitled 'as a  
matter of right, to any fees for  
attendance on distressed British  
Seamen. I have felt compelled  
only to authorize the payment  
of £35, on the understanding that it  
will be refunded if disallowed by  
the Board of Trade.

I notice that Dr Hamblin does  
not admit receiving any fees from  
civilian settlers, nor does he mention  
any fees received by him from  
the increasing number of Seamen

His Grace

The Duke of Newcastle

L. L. H. G.

Visiting

For Memo to Dr Hamblin  
Oct. 27.  
Dr Hamblin reply.  
Oct. 29.



visiting the Port who require his medical aid.

4. But from an intimate knowledge of the Settlement, I am quite prepared to recommend that in the event of any alteration being made in the Office of Colonial Surgeon either by the promotion or supersession of Dr Hamblin, that two Medical Men should be appointed for the Colony with salaries not exceeding £150 each from Government for which certain defined duties should be performed, with permission to practice generally.

I am convinced that there would be ample room for both Medical Practitioners and such Medical attendance as the Government is called upon to provide would be always available: & at an ultimate saving of one half of the present estimate for this department

5/ Much serious inconvenience and alarm was experienced during a recent illness of Dr Hamblin. The presence of two Medical men instead of one only, would obviate this.



Should your Grace feel disposed to recommend my suggestions, I would further propose to facilitate this arrangement, that the difference between Dr Hamblin's present pay & allowance on his Superannuation should be divided between the two Gentlemen who may be appointed.

Dr Hamblin has now been many years in the Colony and however successful the operations in the case of the four men & boys of the "Cubana" who have lost seven legs between them, may have been performed, it is scarcely to be expected Dr Hamblin can after so long an absence from Medical circles be so skilful or so expert as younger men would be.

I willingly bear testimony to the result in this sad case, and should be much pleased if your Grace can see any way to meet Dr Hamblin's wishes.

But I feel ~~sure~~ likewise that the exertions in these different Departments of the Colonial Chaplain the Surgeon General and acting Colonial Secretary, are deserving of special commendation. The peculiar condition of the Shipwreck, crew of the "Cubana" was such as to arouse every sympathy and called forth much extra exertion from each of those officers.

I have the honour  
to be  
Yr<sup>ts</sup> M<sup>ty</sup>  
Gov<sup>r</sup>



Private

Govt House  
 Stanley 27<sup>th</sup> October 1862

My dear Sir

Mr. Payne has shown me your claim for 35 £ for Medical attendance on the crew of the *Cubania* of course I shall be quite willing to authorize the issue of this amount to you, on the understanding that you will at once refund it, if disallowed, which I believe it would be

But I have thought it more prudent for me to point out to you that should you succeed in obtaining from Government through the Board of Trade, any fees beyond your pay, you would most certainly imperil your claim for a Pension.

I would therefore recommend you to look over the Superannuation Regulations, to see how far my view may be correct.

I had intended to draw the attention of the Secretary of State, to the peculiar circumstances under which you

A. J. Hamblin Esq.  
 Colonial Surgeon

Medical



and had been required, and to have  
urged the fact of your being left  
alone to perform very severe operations,  
as a claim on His Government

I have the honour to be  
Sir

Your Obedient Servant

Ed. M. Moore  
for



Falkland Islands  
October 29<sup>th</sup> 1862.

My dear Sir

I beg to thank you  
for your very kind letter of the  
27<sup>th</sup> Inst. respecting my charge  
of £35 to the Board of Trade  
for seven Amputations which  
I undertake to refund if  
disallowed - I am however  
very unwilling to believe the  
Board of Trade will refuse  
my claim when the circum-  
stances of the case are laid  
before them, which in my  
experience here of nearly 20 years  
are unparalleled - the state of  
the Inn admitting of no delay  
obliged me to perform the Capital  
operations within three days  
without

His Excellency

Governor Innes

to the



without any professional assistance  
 whether a most arduous undertaking.  
 I had besides many smaller operations  
 to perform and all the wounds &c  
 to attend to daily for three months;  
 happily with perfect success.

I have however only charged  
 for the Capital operations and I  
 can scarcely think that the Board  
 of Trade could expect me to perform  
 such anxious duties without some  
 compensation.

With regard to your apprehension  
 of my endangering my claim  
 for a pension by accepting this  
 money, I have, according to your  
 kind advice, carefully examined  
 the Superannuation Regulations, but  
 I do not see any clause which  
 in my opinion bars on this  
 peculiar case, Clergymen and  
 Law-officers do not appear to  
 initiate their claims by accepting  
 fees



pres regularly, and this Your  
Excellency is aware is the first  
fee I have received from Government.  
since my appointment in 1843.

I would not on any account  
~~disturb~~ risk my hope of a pension  
which is a matter of the greatest  
moment to me at my age and  
considering that I am precluded  
from adding to my income by  
private practice from the smallness  
of the population.

I feel greatly obliged to Your  
Excellency for your kindness in  
this matter especially for your  
intention of drawing the attention  
of Her Majesty's Government to  
my services, and I have only  
to beg you will do me the  
additional favour of forwarding  
Yours!



your letter of the 27<sup>th</sup> and this  
reply to the Secretary of State  
for his decision, as it is a  
matter of grave importance to  
me I have the honor to be

Yr  
Your Excellency's  
Most obed<sup>t</sup> Servant,

H. J. Hamblin  
Colonial Surgeon



Falkland Islands

Confidential

Downing Street  
18<sup>th</sup> July 1863.

Sir,

I have received your Confidential despatch of the 29<sup>th</sup> of April. I give you entire credit for a desire to keep on good terms with the Agent of the Falkland Islands Company, and I can unhappily but too easily understand the difficulty which you experience in avoiding collision with that body. The circumstances

Governor Mackenzie are



are such as to require no ordinary degree of caution, firmness, and patience.

I can understand the difficulty which you experience in obtaining an unbiased Verdict from a Jury composed in a great measure of employes of the Company. But I do not think that it would be at all wise or right, on that account, to abolish trial by Jury in Civil cases.

The result would be to throw the decision of these cases into the hands of a Magistracy who might — with plausibility be represented as having a bias adverse to the



the Company.

I should wish you however to consult with the Chief Magistrate on his arrival in the Colony, whether the evil might not be remedied by an amendment in the Law of Challenge.

At present it would seem that each party may challenge peremptorily half of the Panel. I wish you to consider whether in addition to, or instead of, these peremptory Challenges, it might not be desirable to give each party the right of objecting to any juror who was dependent on the opposite party - the Court  
having



having of course the right to  
 decide on the sufficiency of  
 the objection, and, within certain  
 limits, having the power to  
 try the case without a jury,  
 if owing to their challenges  
 it was found impossible to  
 procure the required number  
 of jurors.

I have the honor to be  
 Sir,

Your most obedient  
 humble servant

*J. M. Smith*  
 ~~~~~



Dear Sir

There is little doubt that Lane has  
sent a man out to get the Cattle-Kills  
out of the way. I think Pinto sh<sup>d</sup> be sent  
with the enclosed summons (3) early  
tomorrow morning. I sh<sup>d</sup> tell him to  
come in <sup>with them</sup> on Monday ~~after~~ evening, as that  
individual will probably try to bribe the  
to commit perjury. — Can you not  
authorize Pinto to take horses to  
bring them in in the Queen's name.

P.S. Bonine certainly could —

Yours sincerely

Esq.

It is for me



4.2  
Jensen  
a  
Morse

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Circular.

Private.

Downing Street,

June 15, 1849.

Sir,

Having received from some of the Governors of Her Majesty's Colonies statements of the injury to the Public Service which has occasionally resulted from the communication to Parliament and the consequent publication of despatches and other documents received at this Office from the Governors, I think it expedient to call your attention to the fact that the increasing direction of public attention towards the affairs of the Colonies has lately led to very frequent and pressing applications from Members of Parliament for the communication to Parliament of the whole or portions of correspondences between the Secretary of State and the Governors, and it has often been found very difficult for the Secretary of State to judge at a distance, whether

Governor Rennie

Falkland Islands.



injury would or would not arise to the public interests of a Colony from the communication of the papers applied for; and still greater difficulty has been found in disentangling from papers of which the general substance may be communicated without inconvenience, those parts and passages which ought not to be published.

2. I advert to this subject for the purpose of requesting that the numbered series of your Public Despatches may contain within themselves full information on all matters of fact which Parliament may require to be made acquainted with, and that all matters which it may be inexpedient to publish at the time, upon grounds affecting the interests and welfare of the Colony, may be communicated in Confidential Despatches, which would thus be confined chiefly to matters of opinion and remarks.

3. It will by no means follow that all even of the ordinary Public Despatches should be laid before Parliament; on the contrary, there probably will be many which it will be inexpedient to publish, and the Secretary of State must exercise his judgment (as has always been the practice) in determining which are to be so considered, and their production consequently resisted; nor, on the other hand, is it to be understood that the publication of Confidential Despatches is never to take place; special



cases will arise when even these will have to be produced, and it is indispensable that the Secretary of State should retain his right of deciding when these exceptions are to be made from the general rule.

4. But it will tend greatly to facilitate the selection by the Secretary of State of the papers which may be laid before Parliament, if the Governors of Colonies will take care, not only that remarks and expressions of opinion which they would regard it as inconvenient to have published, shall be confined to Confidential Despatches, but also that the regular series of Despatches shall contain a full account of all important transactions within their respective Governments, so that when Parliament may call for information as to any of these transactions, a clear and connected view of what has taken place may be afforded by the numbered Despatches, without adding those that are Confidential. It is very much owing to a want of sufficient attention to this last point, that the practice of publishing Despatches marked as Confidential has of late years become more frequent than it should be. So many cases have occurred in which it has been found impracticable to present to Parliament information which has been called for in a form sufficiently complete without including Confidential Despatches amongst the number which have been so,



presented, that the distinction between these and the  
ordinary Despatches has by degrees been in a great  
measure broken down.

I am.

Guy



Duplicate

CIRCULAR.

ConfidentialDowning Street,  
21st April, 1857.

Sir,

The Governors of the Colonial Possessions of the Crown are entrusted by the Queen's Commissions to them, or by Special Warrants under the Royal Sign Manual, with Public Seals, which have been specially and formally approved by Her Majesty in Council.

These Seals are generally called the Public Seals of the respective Colonies, although there are two instances in which they are styled the Great Seal and the Broad Seal of particular Colonies.

I need not observe that these Seals have been expressly appointed for the purpose of authenticating all Local Laws, Public Instruments, and Documents, or, in the language of Her Majesty's Commissions to Governors, "all things whatsoever that pass the Public Seals" of the respective Colonies.

It has been lately discovered, however, that in a particular Colony, a Seal has been used for public purposes other than the Seal appointed by Her Majesty; and as that is an irregularity which might lead to public and private inconvenience, I have deemed it necessary, not only to caution you against it, but to enquire from you whether any Seal

Governor Moore



is or has been used in the Colony under your Government, for the purposes above-mentioned, distinct from the Public Seal.

If any other such Seal is or has been used, you will have the goodness to transmit it to me, accompanied by a full explanation of the grounds of this deviation from the established practice; and I will then consider what ulterior measures may be called for by the circumstances of the case.

I have the honor to be,

Sir,

Your most obedient

Humble Servant,

W. C. C.



CIRCULAR.

CONFIDENTIAL.

Downing Street,

13th May, 1857.

Sir,

My attention has been called to a few recent instances, in which Governors, on the eve of their retirement from a Colony, have provisionally nominated, and recommended for confirmation to the Secretary of State, the appointment to some permanent office of trust in the Colony, of Gentlemen nearly connected by relationship with themselves, who have previously acted as Private Secretaries, or who have happened to accompany them to their Governments.

It may undoubtedly happen, that the Gentlemen so recommended are fully competent for the discharge of the duties assigned to them, but I feel it right to observe, that recommendations of this kind are open to much objection, and except under very unusual circumstances, they are not likely to be confirmed.

The intention of successive Secretaries of State in waiving, to a great extent, their right of selecting for Her Majesty's approval the holders of important offices in the Colonies, and in consenting more and more to entrust to Governors the practical exercise of patronage, has been to afford to Her Majesty's subjects in the Colonies the best available security that Colonial offices should, as far as possible, be filled by those who, in the eyes of a competent and impartial judge, had proved themselves, by past exertions and proved fitness, the most likely to do good service.

Gouverneur Moore



But when a Governor selects for office a Gentleman nearly related to himself, and one whose competency may indeed be known to himself, but can have been little, if at all, made clear to the Colonial community, it cannot be expected that such a selection will command general approval; and it may even tend to cast a suspicion upon that reputation for perfect impartiality and disinterestedness, which should adhere to the name of any Officer who has had the honour of administering a Colonial Government.

Whatever confidence a Secretary of State may be disposed to place in the advice of a Governor, it is impossible that he can regard recommendations of this nature otherwise than those which he frequently receives from other Gentlemen of high personal character, who solicit employment in the Colonial Service for relatives and personal friends—recommendations with which it is very rarely possible for the Secretary of State to comply.

I trust that these observations will suffice to check a practice, which could not, in my opinion, be continued without much inconvenience to the public service.

Cases may occasionally arise, where, from the want of other qualified candidates, a Governor may be fully justified in nominating to a provisional appointment a relative or near friend; but in such cases I should consider it right, that the circumstance should be reported to the Secretary of State, unaccompanied by a recommendation as to the mode in which the office should permanently be filled, and leaving him as free as possible to deal with the case.

Should such a provisional appointment be made



at the time when a Governor is about to leave the Colony, his successor will be expected, on his own responsibility, to suggest the most fitting arrangements for a permanent appointment.

I have the honour to be,

Sir,

Your most obedient

humble Servant,

W. H. P. S.



CIRCULAR.  
" Confidential."

Downing Street,

14th October, 1858.

Sir,

A question of doubt arose in the Colony of New South Wales respecting the right of the Supreme Court of that Colony to exercise jurisdiction in regard to certain complaints preferred by a Seaman on board of an American Merchant Ship against the Captain and First Officer of the Vessel, and Her Majesty's Government considered it right to obtain the opinion of the Law Officers of the Crown on the question at issue.

That opinion is so clear and so generally instructive on points which are likely to arise in any of Her Majesty's Maritime Colonies, that I think it advisable to place you in possession of it. I, therefore, inclose a Copy for your information; but you will bear in mind, that it is communicated to you confidentially and is not intended for publication.

9th September, 1858.

I have the honour to be,

Sir,

Your obedient,

Humble Servant,

*J. B. Esq.*

Governor Moore

le le le

Falkland Islands



COPY.

DOCTORS' COMMONS,

September 9, 1858

MY LORD,

WE were favoured with your Lordship's commands signified to us in Mr. Hammond's Letter of the 5th of June ultimo, stating that he was directed by your Lordship to transmit to us a Letter from the Colonial Office, forwarding a correspondence between the Authorities of New South Wales and the United States' Consul at Sydney, respecting the jurisdiction which the Supreme Court of the Colony had exercised in regard to certain complaints made by a Seaman on board an American Merchant Ship against the Captain and First Officer of the Vessel; and that he was to request that we would take the Letter from the Colonial Office and its inclosures into our consideration, and favour your Lordship with any observations which might occur to us thereupon.

In obedience to your Lordship's commands, we have the honour to report—

That we understand the case in which the jurisdiction of the Supreme Court of New South Wales was entertained, to have been a proceeding by a Seaman named Durcks, on board a private American Ship the "Snap Dragon," against the Master and First Mate, complaining of 1st non-payment of his wages; 2nd an assault committed upon him on board Ship in the harbour of Port Jackson; and 3rd an assault committed upon him on board Ship on the High Seas.

To these charges the grounds of defence insisted upon before the Supreme Court were various, but the United States' Consul at Sydney now contends that the Supreme Court had no jurisdiction whatever to hear or determine all or any of the causes of complaint. We will, therefore, state seriatim, what occurs to us on each head.

First. As to the claim for wages. This was a claim arising by Contract, and there is no principle of international law better established than this, namely, that a Civil Court of any Country having before it parties to a Contract, in whatever Country the Contract may have been made, and whether the parties to it be Natives or Foreigners, may proceed to administer and decide the rights arising out of the Contract. In the construction of the Contract indeed, regard must be had to the Law and Custom of the Country where it was made; and moreover, if in the Contract, the parties have chosen to stipulate that no action on the Contract shall be brought, except in the Courts of the Country of which they both are subjects, that stipulation is in effect, voluntary curtailment of their natural rights and must prevail. Something of this kind happened with the present case. The Supreme Court having assumed Jurisdiction over the claim for wages, discovered on examination that the Contract contained a term by which Durcks had agreed not to sue for wages until after the return of the Ship, and in the Courts of the United States; the Supreme Court, therefore, gave effect to this clause, and declined to go further with this part of the case.

We see nothing whatever in the course taken by the Supreme Court as to this claim for wages which is open to any objection, or which was not entirely consistent with international Law.

Second. As to the assault in the Harbour of Port Jackson. This was an act occurring within British Territory, between persons who at the time were subject to the Laws of that Territory, and if the act was a wrongful act, the Courts of the Territory were clearly competent to entertain the case and to give redress.

*The Earl of Malmesbury,*

*&c.,      &c.,      &c.*



The suggestion of the United States' Consul is, that an American Merchant Ship in a British Harbour, is, as to all that occurs on board, withdrawn from British Civil Jurisdiction and subjected to American Jurisdiction only. But this suggestion never has been, and never can be, admitted to be well founded. No Merchant Ship in any Harbour of Great Britain or her Colonies possesses any such privilege; nor has such a privilege been ever by any other Country conceded, so far as we know, except in the case of France in which it has been done by a special and exceptional Law and Treaty.

On the general rule of International Law applicable to the subject, Dr. Wheaton, himself an American authority, says, (p. 151, 1st edition, International Law), "When private individuals of one Nation spread themselves through another as business or caprice may direct, \* \* \* or when Merchant Vessels enter for the purposes of trade, it would be obviously inconvenient and dangerous to society, and would subject the Law to continual infraction, and the Government to degradation, if such individuals did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country."

Third. As to the assault on the High Seas. Whether an action can be maintained in a British Court by one Foreigner against another for a wrong done on the High Seas, or in a Foreign Country, is a question on which different opinions have been entertained, and which, however strong the arguments in favour of the Jurisdiction have been supposed to be, cannot be said to have been finally determined by any Court in this country.

The course, however, which was taken by the Supreme Court appears to us to have been the proper one.

They required the Defendants to plead the want of Jurisdiction as a defence to this part of the case, and the Defendants did plead it accordingly. Had the case gone on, a decision would have been given by the Supreme Court on the question of Jurisdiction, and from that decision an appeal would have lain to Her Majesty in Council.

In point of fact, the Master, after pleading to the Jurisdiction, seems to have arrested Durcks, the Plaintiff, as a deserter, and thus contrived to get rid of the litigation.

The United States' Consul appears to have thought either that the Judge should have inquired into the place of the origin of the cause of action before issuing process, or that proceedings could be suspended by the interference of the Executive Government. We cannot concur with either of these views. It is for the party proceeded against to bring before the Court any objections to the Jurisdiction which he has to urge. It is by an appeal to Her Majesty in Council that any decision of the Supreme Court, if deemed erroneous, ought to be corrected.

We have, &c.,

(Signed)

J. D. HARDING.  
FITZROY KELLY.  
H. M. CAIRNS.



*Falkland*

"CIRCULAR."

(Confidential.)

*Downing Street,*

*31st January, 1859*

*Sir,*

Certain differences having lately arisen at Sierra Leone between the local authorities and the French Consul there, respecting the right of searching a French vessel in the harbour of that colony for stolen property, a right which the Consul maintained could not be exercised without his consent, and also respecting the jurisdiction of the local Court over a claim preferred by one of the crew of that vessel for wages, but the decision of which the Consul maintained to rest with himself, I think it right to acquaint you that Her Majesty's Government have deemed it desirable to bring these matters under the notice of the Government of France, and that that Government have completely disavowed the conduct of their Consul, and instructed him to be more cautious in future.

At the same time Her Majesty's Government concur in the opinion which has been expressed by the French Minister for Foreign Affairs, that national courtesy would have been better consulted if a previous intimation had been

*Gouverneur Moore*



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made by the authorities of Sierra Leone to the Consul of the intended search of the French vessel, and an opportunity given to him to be present on the occasion, if he desired it I have, therefore, thought it my duty to call your attention to these papers, with a view to your guidance in similar cases.

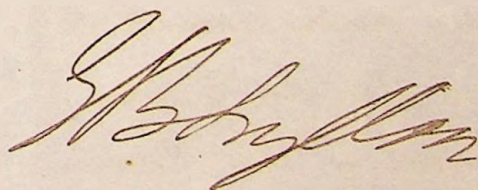
I have marked this circular as confidential, but I would have you to understand that I do not wish to place a restriction upon the employment of it, or a reference to it, should circumstances arise which, in your opinion, would require the adoption of this course.

I have the honour to be,

Sir,

Your most obedient,

Humble Servant,





Falkland

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Circular.

Secret.

Downing Street,

March 3 1860.

Sir,

With reference to Sir George Grey's Circular Despatch of the 7th of September, 1854, marked "Most Secret and Confidential," transmitting, for your information and guidance, copies of a Code of Private Signals prepared on the occasion of the late War with Russia by Her Majesty's Government, in concert with that of the Emperor of the French, for the use of the Ships of War, and the Ports and Colonies of the two Countries, I have to inform you that the Lords Commissioners of the Admiralty have stated that, as the issue of these Signals to Her Majesty's Ships has been discontinued, as no longer necessary, it is desirable that the Governors of the Colonies to whom they were supplied should consider former orders respecting them as cancelled, and that

Gouverneur Riviere



the copies with which they were furnished should be returned.

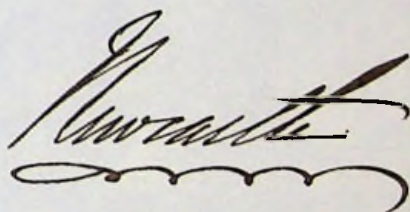
I have therefore to instruct you to act in conformity with the wishes of their Lordships upon this subject.

I have the honour to be,

Sir,

Your most obedient,

humble Servant,





*Falkland*  
(Circular.)

Confidential.

Downing Street,

22 August 1860.

Sir,

Questions have recently arisen respecting the position occupied by the Consuls of foreign countries in Her Majesty's possessions, and as it is of great importance that matters of this kind should be so treated as neither to give just cause of offence to foreign powers, nor to invest the agents of those powers with privileges or immunities not recognised by British law, I think it expedient to communicate to you copies of various letters or despatches in which the opinion of Her Majesty's Government has been expressed on the several claims which from time to time have been preferred by foreign Consuls.

Extract from Sir J.  
Harding's Letter.

1st. On the appointment of a Spanish Consul for Her Majesty's Settlements upon the Gambia, the opinion of the Queen's Advocate in this country, which forms the first of the Enclosures to this despatch, was transmitted to the Governor for his guidance.

Duke of Newcastle's  
Despatch, 138, June 1860.

The second Enclosure is the copy of a Despatch addressed to the Governor of British Guiana, where the Portuguese Consul, in accordance, as he wrongly imagined, with the terms of a treaty between England and Portugal, and of certain instructions conveyed to him in a Circular from his own Government, advanced a claim to administer the property of Portuguese subjects dying in British Guiana.

*Governor Moore*



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Note to Count Persigny,  
Mauritius.

The third Enclosure is the copy of a Note addressed to the French Ambassador, having reference to a complaint made by the French Consul at Mauritius, that he had been brought by subpoena before the Supreme Court of that Colony.

In this case it was admitted that the mode of procedure adopted subjected the Consul to unnecessary inconvenience, and it was understood that a Rule of Court would be passed in order to place the matter on a more satisfactory footing.

Despatch No. 83.,  
12th July 1860, to  
Governor, Canada.

The fourth Enclosure is the copy of a Despatch addressed to the Governor General of Canada respecting certain claims put forward by the French Consul at Quebec.

Secretary of State,  
No. 240, 30th July 1860.

The fifth Enclosure is the copy of a Despatch addressed to the Governor of Mauritius respecting a practice which existed in that Colony of allowing foreign Consuls to exercise a species of criminal jurisdiction.

You will of course consider these documents as communicated to you confidentially.

I have the honour to be,

Sir,

Your most obedient humble Servant,

Albion



## No. 1.

EXTRACT from REPORT from the QUEEN'S ADVOCATE to Lord CLARENDON; dated Doctors' Commons, November 13, 1856.

APART from the privileges (if any) which may be secured to them by any existing treaty with the power whose agents they are (to which, in the case of Spain, no reference is made in Lord Shelburne's letter), I am not aware of any privileges to which foreign consuls are strictly or legally entitled, as of right, in Great Britain or in any of Her colonies.

The English law considers them amenable to civil and criminal jurisdiction, and does not (as far as I am aware) give them or allow them any legal privileges whatsoever. It can hardly be said to recognise them in their official character: and such privileges or exemptions as they may enjoy are conceded to them (if at all) either by the executive or local authorities, at their discretion, or by usage or courtesy. Thus it may be usual and proper to pass a consul's baggage and furniture without examination at the Custom House; to avoid compelling him to serve in the militia, or in any local office, as constable or overseer; to abstain from quartering soldiers in his house, or from pressing his animals or property for the public service; not to insist on his payment of any personal tax or duty; to provide for the careful protection of his house and property (especially of the consulate and archives), in case of emergency or impending danger; and to treat him, both personally, in correspondence and on all occasions, with the greatest official courtesy and consideration.

Discretion and international comity will point out to all colonial authorities the propriety of avoiding (as far as possible) any collision or dispute with any foreign consul as to his personal or official privileges; but should he claim and insist upon any exemption or privilege as belonging to him *legally* and of *right* by virtue of his office, I cannot advise its being conceded, without the advice of the colonial law officers of the Crown, or instructions from home.

## No. 2.

(Copy.)

The Duke of NEWCASTLE to Governor WODEHOUSE.

(B. Guiana, No. 138.)

SIR,

Downing Street, June 9, 1860.

I HAVE received your despatch of the 15th March, requesting to be instructed as to the mode in which you are to deal with a claim advanced by the Portuguese consul in British Guiana to be placed in charge of the effects of deceased Portuguese subjects.

I think the following directions will relieve you from all difficulty:—

You have yourself observed, but I think it as well to repeat, that you have as Governor no right or power to alter or interfere with the existing law or legal procedure in the Colony on the subject in question. If, therefore, the Portuguese consul conceives that he has any legal right to interfere with or to take charge of or administer to the effects of Portuguese subjects deceased, in the absence of heirs, either generally or under any special circumstances or conditions, he must apply to the competent court in that behalf, and not to the Governor, who has no power over the subject matter. I am of opinion that it is not within the Governor's province to discuss either the treaty or the colonial law with the consul; and that it will be your duty, with all proper courtesy, to decline as far as possible all such discussion, reiterating that it is quite out of your power to interpret or alter or to interfere with the existing law, or to authorize any departure from the established system in favour of Portuguese subjects or of the Portuguese consul.

You may also inform him, that no such right as that which is apparently suggested is allowed to or even claimed by the Portuguese consuls in England; and that it is not conceded to any foreign consul here, and does not exist by the law of England.



In the event of the consul's perseverance in insisting upon this claim, you had probably better intimate to him, that until he has taken the ordinary legal steps to obtain the decision of the competent court, all further correspondence must be useless; that if he will not formally and legally make and support his claim, it cannot be considered as rejected; that the question is one of law, and not merely one of executive administration; and that until a competent court has fully heard and decided upon the claim suggested by the consul, it is impossible to know whether it legally exists or not. You may perhaps also suggest, that you are not aware that the Portuguese subjects suffer any serious hardship or practical inconvenience from the prevailing system, nor that they would derive any substantial advantage from the alteration now suggested. You may add, that if the consul were to establish his claim, he would be, as temporary administrator, subject and accountable to the colonial courts, and possibly exposed to much legal responsibility and annoyance; and, finally, you may observe, that the circular does not instruct the consul to advance the claim in question, and does not seem to apply specially to the colony, or extend to any cases but those in which the consul is legally and actually in the possession and exercise of the right suggested.

These topics, however, I merely suggest, in the event of your finding yourself, as it were, forced into a correspondence with the consul. I repeat, however, that you should as far as practicable decline all discussion with him upon the matter, leaving him to make such representations on the subject as he may think fit to his own Government.

Governor Wodehouse,  
&c. &c. &c.

I have, &c.  
(Signed) NEWCASTLE.

No. 3.

(Copy.)

PROPOSED NOTE from Lord JOHN RUSSELL to Count PERSIGNY.

M. L'AMBASSADEUR,

Foreign Office, June 1840.

HER Majesty's Government have had under their consideration the question which had arisen at the Mauritius as to the liability of the French consul at that island to be summoned to appear before the law courts, and to produce the archives of his consulate, for the purpose of forwarding the ends of justice, which formed the subject of your Excellency's note of the 1st of August, and of Baron Malaret's note of the 23d of September of last year. And I have to acquaint your Excellency that the matter appears to Her Majesty's Government to be one in which they have no power whatever to interfere.

The French consul has no personal exemption from attendance in a court of justice in obedience to a subpoena. He should have attended, and stated his objection to produce his consular registers, and it would have been for the court to decide upon the validity of such objection.

It is impossible for Her Majesty's Government to interfere with its courts of justice, or the rules of procedure therein.

There is no rule of international law which entitles consuls to any diplomatic privileges, or any legal exemption from ordinary judicial process. They enjoy no such privileges by English law, and Her Majesty's Government have never insisted upon British consuls being entitled to such privileges or exemptions in France.

It is not of course practicable to lay down beforehand any positive rules as to the questions which a consul, when examined as a witness, may or may not be compelled to answer, or as to the documents which he may or may not be compelled to produce.

Either he or one of the parties must formally object to such production, stating the grounds for such objections, and the court must decide upon the validity thereof.

I have to add, however, that I understand that it is the intention of the judges of the Supreme Court at Mauritius to pass a rule of court, with a view of preventing the recurrence of questions similar to the one raised in the present instance by the French consul in that island.



## No. 4.

(Copy.)

Sir G. LEWIS to Governor Sir E. HEAD.

(No. 83.)

SIR,

Downing Street, July 12, 1860.

I HAVE to acknowledge your despatch No. 27, of the 29th March, enclosing for the consideration of Her Majesty's Government a "note verbale" placed in the hands of the Provincial Secretary by the French consul at Quebec.

It is in the opinion of Her Majesty's Government most inadvisable that the Canadian government should enter into any correspondence on this subject with the French consul, who should be informed that any representations which foreign consuls may have to make to British authorities on matters of this kind must be addressed through their respective governments to Her Majesty's Government. The very irregular course taken by M. Gauldrée Boilleau appears, on inquiry, to have been taken without the sanction or even knowledge of his own government.

That government, however, in disclaiming M. Boilleau's act, expressed their opinion that a French consul should be deemed entitled in British dominions to the following privileges:—

- (1.) Personal immunity, except in case of his committing any crime.
- (2.) Exemption from all national and municipal burdens or taxes, either direct or indirect.
- (3.) Exemption from all personal service in the militia or otherwise, as well as from having soldiers billeted on him.
- (4.) Permission to place over the door of his house the Imperial Arms, and to hoist the French flag.

Her Majesty's Government have replied, that they cannot grant to foreign consuls in the Queen's dominions any of the first three exemptions or immunities mentioned above, but that as no formal permission is required to enable a consul to display the arms or flag of his nation, every consul is at liberty to do as he pleases in this respect.

I have, &amp;c.

Governor Sir E. Head, Bart.,  
&c.                      &c.                      &c.

(Signed) G. C. LEWIS.

## No. 5.

(Copy.)

Sir G. LEWIS to Governor STEVENSON.

(No. 240.)

SIR,

Downing Street, July 30, 1860.

I HAVE to acknowledge your despatch No. 36, of the 29th of February last, requesting the instructions of Her Majesty's Government respecting the extent to which criminal jurisdiction may be exercised in Mauritius by foreign consuls.

The question has been referred to the law officers of the Crown, with whose advice I have to give you the following directions:

Foreign consuls have no legal power or right whatsoever to order or to authorize the arrest, detention, imprisonment, or punishment of any person whatsoever in any British prison or place of confinement, or to require or receive the assistance of the British authorities in carrying out within British jurisdiction any sentence or order, whether criminal or civil, which they may pronounce or issue, excepting in the case of desertion, and then only when, in accordance with the "Foreign Deserters Act, 1852," 15th and 16th Victoria, Cap. 26., Her Majesty has issued an Order in Council relating to the particular government in question, and when the consul of such government may regularly apply to the competent magistrate, under the provisions of that statute and the Order in Council issued in accordance therewith.

With this exception, British officers have no authority to carry into effect the orders or sentences of foreign consuls, by arresting or confining in British custody any persons against whom those consuls may have assumed to pass criminal or quasi criminal sentences; and all consuls, gaolers, and others concerned in proceedings of this nature will, in the opinion of the law officers of the Crown, incur a severe criminal and civil responsibility in any court of this country, and probably in any colonial court before which civil or criminal proceedings may be instituted by any party aggrieved.



As regards all civil disputes, even as to fines, pecuniary penalties, confinement, or restraint, inflicted by consuls on board of the ships of the nation which they represent, no summary or active interference whatsoever by the British authorities is expedient. If any such cases should become the subject of judicial investigation, or of any legal proceedings whatsoever, before any British civil or criminal tribunal, or any British magistrates, the British executive authorities will of course give effect to the process and directions of such tribunals or magistrates; but otherwise they ought not to interfere until regularly applied to and put in motion in a legal and formal manner.

You are to conform your future conduct to these instructions; but, having regard to the usage which appears to have so long prevailed in the colony, I think that you should give reasonable notice (say of three months) by circular to the consuls of the course which it will be necessary for you to pursue, and during that period you must use great caution in giving effect to any consular sentence.

Governor Stevenson, C.B.,  
&c. &c. &c.

I have, &c.  
(Signed) G. C. LEWIS.



CIRCULAR.*Falkland*CONFIDENTIAL.

Downing Street,

2nd January, 1861.

Sir,

Referring to Sir G. C. Lewis's Confidential Circular Despatch of the 22nd August last, communicating to you Copies of various letters or Despatches, in which the opinion of Her Majesty's Government has been expressed on the several claims which from time to time have been preferred by Foreign Consuls in British Colonies, I have the honour to transmit to you copies of a further correspondence between this Department and the Foreign Office, which will furnish you with the views of Her Majesty's Government on the subject of exempting Foreign Consuls from Service in Militia Corps, and I have to instruct you to give your best consideration to this question, and to take the necessary steps for causing a Bill to be submitted to the Legislature of the Colony under your Government, exempting, or enabling the Governor to exempt, from service in the Militia such Consuls or Consular Agents of Foreign Powers as are subjects of the Power which they represent.

F.O. 22nd Sept., 1860.  
C.O. 11th Oct., 1860.  
F.O. 27th Oct., 1860.

I have the honour to be,

Sir,

Your most Obedient

Humble Servant,

*Gouverneur Moore**Curran*



*Mr. Hammond to Sir F. Rogers.*

(Copy.)

Sir,

*Foreign Office, September 22, 1860.*

WITH reference to my letter of the 30th of June last, I am directed by Lord John Russell to transmit to you the accompanying copy of a despatch from Her Majesty's Ambassador at Paris, inclosing a note verbale which had been given him by M. Thouvenel, on the subject of the exemptions and immunities claimed by the French Consul at Quebec.

In this paper M. Thouvenel states that the Consul has been instructed not to address in future communications on such subjects to the Colonial authorities, and it is to be hoped, therefore, that this irregularity will not be renewed; but with regard to the claims put forward, and which were rejected by Her Majesty's Government, M. Thouvenel calls attention to the fact that, as the result of a correspondence which took place in 1859, the French Consular agent in British Guiana was exempted from service in the Militia; and he suggests, therefore, that the claim preferred by M. Boileau for a similar exemption might fairly be allowed. The correspondence referred to was communicated to the Colonial Office on the 22nd of January, 1859, and the exemption was granted with the concurrence of Sir Edward Bulwer Lytton. Under these circumstances, Lord John Russell is of opinion that the concession which has been made in the instance of British Guiana may reasonably be extended to the case at present under consideration; and he, therefore, proposes to instruct Earl Cowley to inform M. Thouvenel that Her Majesty's Government are prepared to grant to M. Boileau the required exemption; but before doing so his Lordship would be glad to be favoured with the opinion of Her Majesty's Secretary of State for the Colonies.

I am, &c.,

(Signed) E. HAMMOND.

*Lord Cowley to Lord John Russell.*

My Lord,

*Paris, September 7, 1860.*

I DULY informed M. Thouvenel as directed by your Lordship's despatch No. 659 of the 30th June, of the position which would be accorded by Her Majesty's Government to the French Consul at Quebec, His Excellency has since placed another "Note Verbale" in my hands with reference to this matter, of which I have the honour to inclose a copy herewith.

Your Lordship will see that M. Thouvenel still hopes that Her Majesty's Government will grant M. Boileau immunity from serving in the Militia, it appearing that your Lordship's predecessor had formally recognized that foreign Consuls should be exempted from this service.

With regard to M. Thouvenel's observation respecting the "rang hierarchique" which he claims for the French Consul, I asked his Excellency what I was to understand by the phrase. He replied, that as in all countries there was a certain rank and social position assigned to Consuls, he trusted that this would be the case at Quebec.

I have, &c.,

(Signed) COWLEY.



(Note Verbale.)

*Paris, Aout 25, 1860.*

IL résulte de la seconde note verbale que sa Excellency Lord Cowley a remise à M. Thouvenel au sujet des privilèges réclamés par le Consul de France à Quebec, que le Gouvernement de Sa Majestie Britannique ne reconnaît aux Consuls de France aucune, pour ainsi dire des immunités qui sont généralement accordées aux Consuls dans les autres pays.

Le Gouvernement de l'Empereur ne peut que regretter cet état de choses ; toutfois en ce qui concerne le service de la milice, il se plaît à espérer qu'après un plus ample examen, le Cabinet de Londres consentira à modifier sa manière de voir, en présence de la réponse que le Principal Secrétaire d'Etat de Sa Majestie Britannique a faite au Duc de Malakoff, le 17 Février, 1859, et par laquelle Lord Malmesbury reconnaissait formellement, à l'occasion d'une réclamation de l'agent Vice Consul de France dans la Guyane Anglaise que les sujets Français exerçant des fonctions Consulaires devaient être exemptés de l'obligation de servir dans la milice locale.

La seule prérogative que la note verbale remise à M. Thouvenel par sa Excellency Lord Cowley concède explicitement aux Consuls de France est celle de placer l'écusson Impérial et d'arborer le Pavillon Français au dessus de la porte de leur maison. Mais le Gouvernement de l'Empereur se plaît à inferer du silence gardé par cette note à l'égard du rang hiérarchique qu'il avait exprimé le désir de voir attribuer aux Consuls Français que sur ce point, les vues du Gouvernement de Sa Majestie Britannique s'accordent avec les siennes.

Quant à l'immunité personnelle, sauf en cas de crime, à l'exemption des taxes publiques, et du logement des militaires, ces privilèges sont concédés en France aux Consuls étrangers à charge de réciprocité : il en résulte qu'il y aurait possibilité d'en faire jouir les Consuls Britanniques en France, si les Consuls Français dans le Royaume Uni, et dans ses possessions obtenaient ces mêmes privilèges.

Le Consul de France à Quebec a d'ailleurs été invité à s'abstenir d'adresser des communications directes sur ces matières aux autorités locales.

*Sir Frederic Rogers to Mr. Hammond.*

(Copy.)

Sir,

*Colonial Office, October 11, 1860.*

I AM directed by the Secretary of State to acknowledge your letter of the 22nd ultimo, referring to previous correspondence with reference to the privileges accorded the French Consul in Canada, and stating that as the French Consul in British Guiana has been relieved from the obligation of serving in the Militia, Lord John Russell proposes to instruct Earl Cowley to inform M. Thouvenel that Her Majesty's Government are prepared to grant a similar exemption in Canada.

I am to observe, however, that the cases of British Guiana and Canada differ in one important particular, viz., that the Governor of British Guiana has by the law of the Colony the power to grant such an exemption, while the Governor of Canada has no such power. The Militia Ordinance of British Guiana (No. 11 of 1857) authorizes the Governor "to exempt from service any person whom he shall think fit to exempt," but the Canadian Act (18 Vic. cap. 77, sec. 14), declares that "the sedentary Militia shall consist of all the male inhabitants of the Province of the age of 18 years and upwards, and under 60, not exempted or disqualified by law," and the foreign Consuls are not so exempted or disqualified. The Home Government has no power to alter that law, or to direct the proceedings of the executive officers, who are under the orders of the responsible Government of the Colony.

It would not, therefore, be possible in Canada to give effect to



M. Thouvenel's proposal. All that could be done would be to instruct the Governor to bring the question under the notice of his Ministry, with an expression of the desire of the Home Government that they would submit a bill to the Legislature exempting, or enabling the Governor to exempt from service in the Militia the subjects of any foreign power acting as the Consuls or Consular agents of that Power. Such instructions, if Lord John Russell should desire it, the Secretary of State will be prepared to send to the Governor-General of Canada.

I have, &c.,  
(Signed) F. ROGERS.

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*Mr. Hammond to Sir F. Rogers.*

(Copy.)

Sir,

*Foreign Office, October 27, 1860.*

WITH reference to your letter of the 11th instant, upon the subject of the wish expressed by the French Government that the French Consul in Canada should be exempted from service in the Militia, I am directed by Lord John Russell to request that you will move Her Majesty's Secretary of State for the Colonies to cause instructions to be sent to the Governor of Canada of the nature alluded to in the concluding paragraph of your letter above mentioned; and at the same time I am to inclose to you a copy of the despatch which his Lordship has addressed to Her Majesty's Ambassador at Paris, from which you will perceive that he has been desired to inform the French Government that such instructions will be sent to the Governor.

I am, &c.,  
(Signed) E. HAMMOND.

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*Lord J. Russell to Lord Cowley.*

(Copy.)

My Lord,

*Foreign Office, October 27, 1860.*

WITH reference to your Excellency's despatch No. 1182 of the 7th ultimo, inclosing a note verbale which had been placed in your hands by M. Thouvenel on the subject of the exemptions and immunities claimed by the French Consul at Quebec, I transmit herewith copy of a letter from the Colonial Office, from which you will perceive that according to the existing law of Canada, exemption from service in the Militia cannot be accorded to the French Consul.

M. Thouvenel in the note verbale above alluded to, states that the exemption requested in favour of the French Consul in Canada may fairly be allowed, as such exemption had already been granted in 1859 by the French consular agent in British Guiana, but your Excellency will explain to M. Thouvenel that the cases of British Guiana and Canada differ in one important particular, viz., that the Governor of British Guiana has by the law of the Colony the power to grant such an exemption, while the Governor of Canada has no such power.

The Militia Ordinance of British Guiana (No. 11, of 1857) authorizes the Governor "to exempt from the service any person whom he shall think fit to exempt; but the Canadian Act (18 Vict. cap. 77, sec. 14) declares that the "sedentary Militia shall consist of all the male inhabitants of the province of "the age of 18 years and upwards, and under 60, not exempted or disqualified "by law," and the foreign Consuls are not so exempted or disqualified.

The Home Government has no power to alter that law, or to direct the proceedings of the executive officers, who are under the orders of the responsible



Government of the Colony. It would not therefore be possible in Canada under the existing law to give effect to M. Thouvenel's proposal.

Her Majesty's Government, however, being desirous, as far as lies in their power, to meet the wishes of the French Government in this matter, are willing to adopt the only method open to them which is likely to effect that object, and I have accordingly requested Her Majesty's Secretary of State for the Colonies to instruct the Governor to bring the question under the notice of his Ministry with an expression of the desire of the Home Government that they would submit a Bill to the Legislature exempting or enabling the Governor to exempt from service in the Militia the subjects of any Foreign Power acting as the Consuls or consular agents of that Power.

I am, &c.,

(Signed) J. RUSSELL.

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Falklands.

205

Circular.

Confidential.

Downing Street.

December 12, 1863.

Sir,

I transmit to you, for your information and guidance, the accompanying Correspondence between this Department, the Admiralty, the Law Officers of the Crown, and the Governor of the Cape of Good Hope, arising out of the proceedings of the Confederate States' ships of war, the "Alabama," her reported tender the "Tuscaloosa," and the "Georgia," in that Colony.

I have the honour to be,

Sir,

Your most obedient,

humble Servant,

Governor Mackenzie





CONFIDENTIAL.

## Proceedings of Ships of War of the so-styled Confederate States of North America at the Cape of Good Hope.

No. 1.

*Rear-Admiral Sir B. Walker to the Secretary to the Admiralty.*

(No. 186.)

Sir,

*"Narcissus," Simon's Bay, August 19, 1863.*

I BEG you will be pleased to acquaint my Lords Commissioners of the Admiralty with the following particulars relative to the proceedings of the Confederate States' ships of war "Alabama," her reported tender "Tuscaloosa," and the "Georgia," which have recently arrived at the Cape of Good Hope.

2. On the 28th of July an English schooner arrived in Table Bay, and reported that on the previous day she had been boarded by the Confederate steamer "Alabama," fifteen miles north-west of Green Point. After some inquiries the "Alabama" left her, steering south-east.

3. Upon the receipt of this intelligence I ordered Captain Forsyth, of the "Valorous," to hold himself in readiness to proceed to any of the ports in this Colony where the "Alabama" might anchor, in order to preserve the rules of strict neutrality.

4. By a letter addressed to the Governor of this Colony by Captain Semmes, copy of which was telegraphed to me on the 4th instant (Inclosure No. 1), it appears that the "Alabama" had proceeded to Saldanha Bay for a few days, anchoring there on the 29th of July.

5. On the 5th instant I received a private telegram, to the effect that the "Alabama" was off Table Bay, when I directed the "Valorous" immediately to proceed to that anchorage; and shortly afterwards a telegram reached me from the Governor stating "that the 'Alabama' had captured a vessel (American), which was in sight, and steering for Table Bay." The "Valorous" reached that Bay at 10.15 P.M., where the "Alabama" had anchored at 3 o'clock in the afternoon of the same day.

6. Captain Forsyth having informed me in his letter (see Inclosure No. 2) that the tender to the "Alabama" had been ordered by Captain Semmes to Simon's Bay for provisions, and having learnt that this vessel had been captured off the coast of Brazil, and not been condemned in any Prize Court, I had doubts as to the legality of considering her in the light of a tender, being under the impression that it was a ruse to disguise the real character of the vessel. I therefore wrote to the Governor to obtain the opinion of the Attorney-General of the Colony upon this subject, which correspondence is inclosed (*vide* Nos. 3 to 7).

7. On the 8th of August the tender "Tuscaloosa," a sailing-barque, arrived in Simon's Bay, and the boarding officer having reported to me that her original cargo of wool was still on board, I felt that there were grounds for doubting her real character, and again called the Governor's attention to this circumstance. My letter and his reply are annexed (Nos. 8 and 9). And I would here beg to submit to their Lordships' notice that this power of a Captain of a ship of war to constitute every prize he may take a "tender," appears to me to be likely to lead to abuse and evasion of the laws of strict neutrality, by being used as a means for bringing prizes into neutral ports for disposal of their cargoes, and secret arrangements—which arrangements, it must be seen, could afterwards be easily carried out at isolated places.

8. The "Alabama," after laying three days in Table Bay, came to this anchorage to caulk and refit. She arrived here on the 9th, and sailed again on the 15th instant. Captain Semmes was guarded in his conduct, and expressed himself as most anxious not to violate the neutrality of these waters.

9. I should observe that, from the inclosed copy of a letter from Captain Forsyth to the Governor (No. 11), it would appear that the vessel "Sea Bride," taken by the "Alabama" off Table Bay, was beyond the jurisdiction of neutral territory.

10. During his passage to this port Captain Semmes chased another American vessel, the "Martha Wentzel," standing in for Table Bay. On my pointing out to him that he had done so in neutral waters, he assured me that it was quite unintentional, and, being at a distance from the land, he did not observe that he had got within three miles of an imaginary line drawn from the Cape of Good Hope to Cape Hanglip, but on discovering it he did not detain the vessel. This explanation I considered sufficient.



11. The tender "Tuscaloosa," having been detained by a strong south-easter, got under weigh for the purpose of going to sea on the 14th instant, but anchored again a little distance from the Roman Rock Light-house in consequence of a thick fog prevailing.

12. The "Alabama" did not take in any coal, either here or at Table Bay, but after being caulked she proceeded to sea on the 15th instant, followed by the "Tuscaloosa." Their destinations are unknown.

13. On the 16th instant the Confederate States' steamer "Georgia," Commander Maury, anchored in this Bay. She requires coal, provisions, and caulking. This vessel did not meet the "Alabama" outside.

14. The "Florida," another Confederate States' steamer, is reported to be off this coast, probably cruising to intercept the homeward-bound American ships from China; indeed, it is with that object these ships are on this part of the Station.

15. I have learnt, since the departure of the "Alabama" and her so-called tender, that overtures were made by some parties in Cape Town to purchase the cargo of wool, but, being unsatisfactory, they were not accepted. It is reported to be Captain Semmes' intention to destroy the "Tuscaloosa" at sea.

16. The "Alabama" is a steamer of about 900 tons, with 8 guns and 150 men. The "Georgia" is an iron steamer of about 700 tons, with 5 guns and 110 men. The "Tuscaloosa" is a sailing-barque of 500 tons, having 2 small guns and 10 men.

I have, &c.  
(Signed) B. W. WALKER.

Inclosure 1 in No. 1.

*Captain Semmes, C.S.N., to Governor Sir P. Wodehouse.*

Sir, *Confederate States' steamer "Alabama," Saldanha Bay, August 1, 1863.*  
AN opportunity is offered me by the coasting schooner "Atlas" to communicate with the Cape, of which I promptly avail myself.

I have the honour to inform your Excellency that I arrived in this bay on Wednesday morning last for the purpose of effecting some necessary repairs. As soon as these repairs can be completed I will proceed to sea, and in the meantime your Excellency may rest assured that I will pay the strictest attention to the neutrality of your Government.

I have, &c.  
(Signed) R. SEMMES.

Inclosure 2 in No. 1.

*Captain Forsyth to Rear-Admiral Sir B. Walker.*

Sir, *"Valorous," Table Bay, August 6, 1863.*  
I HAVE the honour to report my arrival here at 10:15 p.m. last evening, and found the Confederate steamer "Alabama" had anchored at 3 p.m. previously.

This morning I put myself in communication with the Commander of that vessel, and he informs me he intends leaving this anchorage at daylight to-morrow, or as soon as he has provisioned, and he proceeds to Simon's Bay for repairs; he also informed me he had a tender which he left cruising outside, and had ordered her to Simon's Bay, there to procure provisions.

On my visiting his Excellency the Governor he requested I would remain here a few days provided you had no objection, in case of the arrival of the Confederate vessel "Florida," which is expected.

I have, &c.  
(Signed) CHARLES C. FORSYTH.

Inclosure 3 in No. 1.

*Rear-Admiral Sir B. Walker to Governor Sir P. Wodehouse.*

Sir, *"Narcissus," Simon's Bay, August 7, 1863.*  
CAPTAIN FORSYTH having informed me that the "Alabama" has a tender outside captured by Captain Semmes on the coast of America, and commissioned by one of the "Alabama's" Lieutenants, and as this vessel has been ordered into Simon's Bay for provisions, may I request your Excellency will be good enough to obtain the opinion of the Law Officers whether this vessel ought still to be looked upon in the light of a prize, she never having been condemned in a Prize Court; the Instructions, copy of which I inclose, strictly forbidding prizes captured by either of the contending parties in North America being admitted into our ports.

I have, &c.  
(Signed) B. W. WALKER.



## Inclosure 4 in No. 1.

*Extract from "Wheaton's Elements of International Law" (Vol. ii, p. 88).*

THE title to property lawfully taken in war may, upon general principles, be considered as immediately divested from the original owner and transferred to the captor. This general principle is modified by the positive law of nations, in its application both to personal and real property. As to personal property or moveables, the title is, in general, considered as lost to the former proprietor as soon as the enemy has acquired a firm possession, which, as a general rule, is considered as taking place after the lapse of twenty-four hours. The established usage of maritime nations has excepted from the operation of this rule the case of ships and goods captured at sea, the original title to which is not generally considered as completely divested until carried *infra præsidia*, and regularly condemned in a competent Court of Prize.

## Inclosure 5 in No. 1.

*Governor Sir P. Wodehouse to Rear-Admiral Sir B. Walker.*

Sir,

*Government House, Cape Town, August 8, 1863.*

I HAVE the honour to acknowledge the receipt of your Excellency's letter of yesterday's date, and to inclose the copy of an opinion given by the Acting Attorney-General to the effect that the vessel to which you refer ought to be regarded as a tender and not as a prize.

I shall take care to submit this question to Her Majesty's Government by the next mail, but in the meantime I conclude that your Excellency will be prepared to act on the opinion of the Attorney-General in respect to any vessels which may enter these ports in the character of prizes converted into ships of war by the officers of the navy of the Confederate States.

I have, &c.  
(Signed) P. E. WODEHOUSE.

## Inclosure 6 in No. 1.

*Opinion.*

*Attorney-General's Office, Cape Town, August 7, 1863.*

I AM of opinion that the vessel referred to in the letter of his Excellency the Rear-Admiral and Commander-in-chief on this station of this date cannot be looked upon in the light of a prize for the following reasons:—

1. Because she purports to be a ship of war belonging to the States calling themselves the Confederate States, recognized by Her Majesty as a belligerent during the existing hostilities between those States and the United States of America, and respecting which ships of war rules have been sanctioned by Her Majesty's Government, and ordered to be observed throughout her dominions and Colonial possessions, and which should not be departed from under any circumstances.

2. Because no legal proof has been adduced to satisfy the Government of this Colony that the said ship of war bears a character other than what she is represented to be.

3. Because, admitting her to have been captured by a ship of war of the said Confederate States, she is entitled to refer this Government, in case of any dispute, to the Court of her States, in order to satisfy it as to her real character, and no means exist for determining whether she has or not been judicially condemned in a Court of competent jurisdiction.

4. Because Captain Semmes, as the commander of a ship of war professedly belonging to the said Confederate States, has sufficient authority to convert any captured vessel into a ship of war, and to vest in her, by so doing, all the rights and immunities which, under the rules above mentioned, have been accorded by Her Majesty to such ships.

This opinion I entertain upon and by virtue of the instructions conveyed by the despatch of his Grace the Duke of Newcastle to his Excellency the Governor of this Colony, dated February 1, 1862, and upon the authority, among others, of Wheaton's "Elements of International Law," of which I inclose an extract.

(Signed) P. J. DENYSSEN.

## Inclosure 7 in No. 1.

*Extract from "Wheaton's Elements of International Law."*

WHAT constitutes a setting forth as a vessel of war has been determined by the British Courts of Prize, in cases arising under the clause in the Act of Parliament, which may serve for the interpretation of our own law, as the provisions are the same in both. Thus it has been settled that where a ship was originally armed for the Slave Trade, and after capture an additional number of men were put on board, but there was no commission of war and no additional arming, it was not a setting forth as a vessel of war under the Act. But a commission of war is decisive if there be guns



on board, and where the vessel after the capture has been fitted out as a privateer, it is conclusive against her, although, when recaptured, she is navigating as a mere merchant-ship; for where the former character of a captured vessel had been obliterated by her conversion into a ship of war, the Legislature meant to look no further, but considered the title of the former owner for ever extinguished. Where it appeared that the vessel had been engaged in a military service of the enemy, under the direction of his Minister of the Marine, it was held as a sufficient proof of a setting forth as a vessel of war; so where the vessel is armed, and is employed in the public military service of the enemy by those who have competent authority so to employ it, although it be not regularly commissioned. But the mere employment in the enemy's military service is not sufficient; but if there be a fair semblance of authority, in the person directing the vessel to be so employed, and nothing upon the face of the proceedings to invalidate it, the Court will presume that he is duly authorized; and the commander of a single ship may be presumed to be vested with this authority as commander of a squadron.

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Inclosure 8 in No. 1.

*Rear-Admiral Sir B. Walker to Governor Sir P. Wodehouse.*

Sir,

*"Narcissus," Simon's Bay, August 8, 1863.*

I HAVE the honour to acknowledge the receipt of your Excellency's letter of this day's date, covering the written opinion of the Acting Attorney-General of this Colony as to the legality of the so-called tender to the Confederate States' armed ship "Alabama," and for which I beg to express my thanks.

The vessel in question, now called the "Tuscaloosa," arrived here this evening, and the boarding officer from my flag-ship obtained the following information:—

That she is a barque of 500 tons, with two small rifled 12-pounder guns and ten men, and was captured by the "Alabama" on the 21st June last, off the coast of Brazil: cargo of wool still on board.

The admission of this vessel into port will, I fear, open the door for numbers of vessels captured under similar circumstances being denominated tenders, with a view to avoid the prohibition contained in the Queen's instructions; and I would observe that the vessel "Sea Bride," captured by the "Alabama" off Table Bay a few days since, or all other prizes, might be in like manner styled tenders, making the prohibition entirely null and void.

I apprehend that to bring a captured vessel under the denomination of a vessel of war, she must be fitted for warlike purposes, and not merely have a few men and two small guns put on board her (in fact nothing but a prize crew) in order to disguise her real character as a prize.

Now this vessel has her original cargo of wool still on board, which cannot be required for warlike purposes, and her armament and the number of her crew are quite insufficient for any services other than those of slight defence.

Viewing all the circumstances of the case, they afford room for the supposition that the vessel is styled a "tender" with the object of avoiding the prohibition against her entrance as a prize into our ports, where, if the captors wished, arrangements could be made for the disposal of her valuable cargo, the transshipment of which, your Excellency will not fail to see, might be readily effected on any part of the coast beyond the limits of this Colony.

My sole object in calling your Excellency's attention to the case is to avoid any breach of strict neutrality.

I have, &c.  
(Signed) B. W. WALKER.

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Inclosure 9 in No. 1.

*Governor Sir P. Wodehouse to Rear-Admiral Sir B. Walker.*

Sir,

*Government House, Cape Town, August 10, 1863.*

I HAVE the honour to acknowledge the receipt of your Excellency's letter of the 8th instant, on which I have consulted the Acting Attorney-General.

The information given respecting the actual condition of the "Tuscaloosa" is somewhat defective, but referring to the extract from Wheaton transmitted in my last letter, the following is the Attorney-General's opinion:—

If the vessel received the two guns from the "Alabama" or other Confederate vessel of war, or if the person in command of her has a commission of war, or if she be commanded by an officer of the Confederate navy, in any of these cases there will be a sufficient setting forth as a vessel of war to justify her being held to be a ship of war; if all of these points be decided in the negative, she must be held to be only a prize and ordered to leave forthwith.

I have, &c.  
(Signed) P. E. WODEHOUSE.



Inclosure 10 in No. 1.

*Rear-Admiral Sir B. Walker to Governor Sir P. Wodehouse.*

Sir, "Narcissus," *Simon's Bay, August 11, 1863.*  
I HAVE the honour to acknowledge the receipt of your Excellency's letter dated yesterday respecting the Confederate barque "Tuscaloosa" now in this bay.  
As there are two guns on board, and an officer of the "Alabama" in charge of her, the vessel appears to come within the meaning of the cases cited in your above-mentioned communication.

I have, &c.  
(Signed) B. W. WALKER.

Inclosure 11 in No. 1.

*Captain Forsyth to Governor Sir P. Wodehouse.*

Sir, "Valorous," *Table Bay, August 6, 1863.*  
IN compliance with the request conveyed to me by your Excellency, I have the honour to report that I have obtained from Captain Semmes a statement of the positions of the Confederate States' steamer "Alabama" and the American barque "Sea Bride" when the latter was captured yesterday afternoon.

Captain Semmes asserts that, at the time of his capturing the "Sea Bride," Green Point Light-house bore, from the "Alabama," south-east about 6 or 6½ miles.

This statement is borne out by the evidence of Captain Wilson, Port Captain of Table Bay, who has assured me that at the time of the "Sea Bride" being captured he was off Green Point in the port boat, and that only the top of the "Alabama's" hull was visible.

I am of opinion that, if Captain Wilson could only see that portion of the hull of the "Alabama," she must have been about the distance from the shore which is stated by Captain Semmes, and I have therefore come to the conclusion that the "Sea Bride" was beyond the limits assigned when she was captured by the "Alabama."

I have, &c.  
(Signed) CHARLES C. FORSYTH.

No. 2.

*Mr. Adams to Earl Russell.—(Received September 30.)*

My Lord, *Legation of the United States, London, September 29, 1863.*  
I HAVE the honour to transmit the copy of a letter received by me from Mr. Walter Graham, Consul of the United States at Cape Town, in relation to certain occurrences at that place connected with the armed vessel called the "Alabama."

Without intending to sustain all the allegations therein contained, I cannot but consider that a sufficient basis of fact exists to support his remonstrance against the recognition of the captures of vessels, which appears to have been at least partially made by the authorities at Cape Town.

In the absence of special instructions on the subject, I take the liberty simply to present the papers for your Lordship's consideration, not doubting the disposition of Her Majesty's Government to do full justice in the premises.

I pray, &c.  
(Signed) CHARLES FRANCIS ADAMS.

Inclosure in No. 2.

*Mr. Graham to Mr. Adams.*

Sir, *United States' Consulate, Cape Town, Cape of Good Hope, August 17, 1863.*  
THE Confederate steamer "Alabama" arrived on this coast on the 27th day of July, having captured six American vessels from the time she left Bahia, Brazil, viz., the "Amazonian," "Talisman," "Conrad," "S. Gildersleve," "Anna F. Schmidt," and "Express."

On the same day that she arrived on this coast she spoke a small British schooner named the "Rover," which reported her next day at this port (July 28). She was afterwards seen by other vessels on the morning of the 28th, but no intelligence was received here that she had entered any of the ports or bays of this Colony until Tuesday, the 4th of August, when the British schooner "Atlas" reported that she had entered Saldanha Bay on the 28th, and was still there, her crew being engaged in painting her.

Captain Boyce, of the "Atlas," said he was requested by Captain Semmes to take some prisoners to me at Cape Town, but he declined to do so.

On hearing this intelligence I wrote the following letter to the Governor, which I carried in person to request an interview on the subject of which it treated:—

C



*"United States' Consulate, Cape Town, August 4, 1863.*

"His Excellency Sir Philip E. Wodehouse.

"Sir,

"From reliable information received by me, and which you are also doubtless in possession of, a war-steamer called the 'Alabama' is now in Saldanha Bay being painted, discharging prisoners of war, &c.

"The vessel in question was built, in England, to prey upon the commerce of the United States of America, and escaped therefrom while on her trial-trip, forfeiting bonds of 20,000*l.*, which the British Government exacted under the Foreign Enlistment Act.

"Now, as your Government has a Treaty of Amity and Commerce with the United States, and has not recognized the persons in revolt against the United States as a Government at all, the vessel alluded to should be at once seized and sent to England, from whence she clandestinely escaped. Assuming that the British Government was sincere in exacting the bonds, you have doubtless been instructed to send her home to England, where she belongs. But if, from some oversight, you have not received such instructions, and you decline the responsibility of making the seizure, I would most respectfully protest against the vessel remaining in any port of the Colony another day. She has been at Saldanha Bay four [six] days already, and a week previously on the coast, and has forfeited all right to remain an hour longer by this breach of neutrality. Painting a ship does not come under the head of 'necessary repairs,' and is no proof that she is unseaworthy; and to allow her to visit other ports after she has set the Queen's proclamation of neutrality at defiance would not be regarded as in accordance with the spirit and purpose of that document.

"Yours, &c.

(Signed) "WALTER GRAHAM, *United States' Consul.*"

Not finding the Governor at home, I left the above letter. Next morning, the 5th. of August, I received the following:—

"Sir,

*"Colonial Office, August 5, 1863.*

"I am directed by the Governor to acknowledge the receipt of your letter of yesterday's date relative to the 'Alabama.'

"His Excellency has no instructions, neither has he any authority, to seize or detain that vessel; and he desires me to acquaint you that he has received a letter from the Commander, dated the 1st instant, stating that repairs were in progress, and as soon as they were completed he intended to go to sea. He further announces his intention of respecting strictly the neutrality of the British Government.

"The course which Captain Semmes here proposes to take is, in the Governor's opinion, in conformity with the instructions he has himself received relative to ships of war and privateers belonging to the United States and the States calling themselves the Confederate States of America visiting British ports.

"The reports received from Saldanha Bay induce the Governor to believe that the vessel will leave that harbour as soon as her repairs are completed; but he will immediately, on receiving intelligence to the contrary, take the necessary steps for enforcing the observance of the rules laid down by Her Majesty's Government.

"I have, &c.

(Signed) "L. ADAMSON,  
"For the Colonial Secretary."

About 2 o'clock P.M. on the same day (August 5), it was reported from the signal-station of the harbour that the steamer "Alabama" was standing in, and also an American barque; and shortly after it was signalled that the steamer was standing towards the barque. On hearing this I at once took a cab and proceeded in the direction of Green Point, about two miles from my office, where I witnessed the capture of the barque "Sea Bride" by the "Alabama." I immediately proceeded to the Governor's house and told him what I had seen, protesting at the same time against the capture because it was permitted in British waters.

His Excellency remarked that the question of infringement of neutral rights would be purely dependent on testimony; but he assured me that in any event no breach of neutrality would be permitted, so far as he could prevent it. He concluded the interview by stating that he would immediately telegraph the Admiral of the station at Simon's Bay to send a war-vessel round to this harbour (Table Bay) to enforce a strict neutrality; and requested me to put my protest in writing.

At 3 o'clock I returned to my office, and at 4 o'clock I dispatched the following letter:—

*"United States' Consulate, Cape Town, August 5, 1863.*

"To his Excellency Sir Philip E. Wodehouse.

"Sir,

"The Confederate steamer 'Alabama' has just captured an American barque off Green Point, or about four miles from the nearest land (Robben Island). I witnessed the capture with my own eyes, as did hundreds of others at the same time. This occurrence at the entrance of Table Bay, and clearly in British waters, is an insult to England and a grievous injury to a friendly Power, the United States.

"Towards the Government of my country and her domestic enemies the Government of England assumes a position of neutrality, and if the neutrality can be infringed with impunity, in this bold and daring manner, the Government of the United States will no doubt consider the matter as one requiring immediate explanation.



"Believing that the occurrence was without your knowledge or expectation, and hoping you will take such steps to redress the outrage as the exigency requires, I am, &c.

(Signed) "WALTER GRAHAM, *United States' Consul.*"

About 5 o'clock his Excellency sent for me to the Custom-house, and informed me that Captain Semmes desired to land some prisoners, and that he, the Governor, would grant permission provided I would agree to support them. This I consented to do, and the Governor then acknowledged the receipt of my letter, and repeated his assurances that no breach of neutrality would be permitted.

Next morning (Thursday, August 6) I received the following:—

"Sir,

"*Colonial Office, August 6, 1863.*

"I am directed by the Governor to acknowledge the receipt of your letter of yesterday's date respecting the capture of the 'Sea Bride' by the 'Alabama,' and to acquaint you that he will lose no time in obtaining accurate information as to the circumstances of the capture.

"I have, &c.

(Signed) "RAWSON W. RAWSON, *Colonial Secretary.*"

About the same time this letter was received all the prisoners were landed, fifteen of whom were the crew of the "Anna F. Schmidt," fifteen of the "Express," and twelve of the "Sea Bride."

On the afternoon of the same day I dispatched the following:—

"Sir,

"*United States' Consulate, Cape Town, August 6, 1863.*

"I have the honour to acknowledge the receipt of your despatch of this date.

"I beg now to inclose, for your Excellency's perusal, the affidavit of Captain Charles F. White, of the 'Sea Bride,' protesting against the capture of the said barque in British waters. The bearings taken by him at the time of capture conclusively show that she was in neutral waters, being about two and a-half miles from Robben Island. This statement is doubtless more satisfactory than the testimony of persons who measured the distance by the eye.

"I believe that there is no law defining the word 'coast' other than international law. That law has always limited neutral waters to the fighting distance from land, which, upon the invention of gunpowder, was extended to a distance of three nautical miles from land on a straight coast, and by the same rule, since the invention of Armstrong rifled cannon, to at least six miles.

"But all waters inclosed by a line drawn between two promontories or headlands are recognized by all nations as neutral, and England was the first that adopted the rule, calling such waters the 'King's chambers.' By referring to 'Wheaton's Digest,' page 234, or any other good work on international law, you will find the above rules laid down and elucidated.

"The fact that the prize has not already been burned, and that her fate is still in suspense, is clear proof that Captain Semmes had misgivings as to the legality of the capture, and awaits your Excellency's assent. If you decide that the prize was legally taken, you will assume a responsibility which Captain Semmes himself declined to take.

"I have, &c.

(Signed) "WALTER GRAHAM, *United States' Consul.*"

Inclosure.

"*United States' Consulate, Cape Town, August 6, 1863.*

"On this 6th day of August, A.D. 1863, personally appeared before me, Walter Graham, Consul of the United States at Cape Town, Charles F. White, Master of the barque 'Sea Bride,' of Boston, from New York, and declared on affidavit that, on the 3rd day of August instant, he sighted Table Mountain and made for Table Bay, but that on the 4th instant, night coming on, he was compelled to stand out. On the 5th instant he again made for the anchorage, and about 2 P.M. saw a steamer standing towards the barque, which he supposed was the English mail-steamer, but on nearing her he found her to be the Confederate steamer 'Alabama.' He, Captain White, was peremptorily ordered to heave his vessel to as a prize to the 'Alabama.' One gun was first fired, and immediately after the demand was made another gun was fired. Two boats were lowered from the 'Alabama' and sent on board the barque. The officer in charge of these boats demanded the ship's papers, which the said Master was compelled to take on board the said steamer. This happened about a quarter before 3 o'clock. He and his crew were immediately taken from his vessel and placed as prisoners on board the 'Alabama,' the officers and crew being put in irons. The position of the barque at the time of capture was as follows: Green Point Light-house bearing south by east; Robben Island Light-house, north-east.

"The said appearer did further protest against the illegal capture of said vessel, as she was in British waters at the time of capture, according to bearings.

"Thus done and protested before me, the said Consul, the day, month, and year above written.

(Signed)

"WALTER GRAHAM, *United States' Consul.*

"CHARLES F. WHITE, *Master 'Sea Bride.'*"



Next morning (August 7) I received the following:—

"Sir,

*"Colonial Office, August 7, 1863.*

"I am directed by the Governor to acknowledge the receipt of your letter of yesterday's date, inclosing an affidavit made by the Master of the 'Sea Bride,' and to acquaint you that an inquiry into them is now in progress.

"I have, &c.  
(Signed) "RAWSON W. RAWSON, *Colonial Secretary.*"

On the same day I sent the Governor the following:—

*"United States' Consulate, Cape Town, August 7, 1863.*

"His Excellency Sir Philip E. Wodehouse.

"Sir,

"Understanding from your letter of this date, received this morning, that the case of the 'Sea Bride' is still pending, I inclose the affidavits of the first officer of that vessel and the cook and steward, which I hope will throw additional light on the subject.

"From the affidavit of the first officer it appears that the alleged prize was brought within one and a-half miles of Green Point Light-house yesterday, at 1 o'clock P.M. Now, as the vessel was at that time in charge of a prize crew, it was a violation of neutrality as much as if the capture had been made at the same distance from land.

"Pending your decision of the case I would most respectfully suggest that the prize-crew on board the 'Sea Bride' be removed, and that the vessel be put in charge of a crew from Her Majesty's ship 'Valorous.'

"I have, &c.  
(Signed) "WALTER GRAHAM, *United States' Consul.*"

The inclosures of the above letter gave the bearings of the ship at the time mentioned, which were as follows: Robben Island Light-house, north-east by north  $\frac{1}{2}$  north; Green Point Light-house, south-west  $\frac{1}{2}$  west.

The steward also testified that orders were given to burn the "Sea Bride" at 2 o'clock A.M., on the 6th, which were afterwards countermanded when all was ready.

On Friday I learned, unofficially, that testimony had been taken that day before a Clerk of the Peace in Cape Town, in relation to the capture of the "Sea Bride," and that the testimony consisted of statements as to the distance from land, estimated by persons on land, at the time of capture, and that the testimony of Captain White and others of the "Sea Bride" and of the "Alabama" was thrown out or not taken.

On Saturday at 4 o'clock P.M. I received the following:—

"Sir,

*"Colonial Office, August 8, 1863.*

"With reference to the correspondence that has passed relative to the capture by the Confederate States' steamer 'Alabama' of the barque 'Sea Bride,' I am directed by the Governor to acquaint you that, on the best information he has been enabled to procure, he has come to the conclusion that the capture cannot be held to be illegal, or in violation of the neutrality of the British Government, by reason of the distance from land at which it took place.

"His Excellency will, by next mail, make a full report of the case to Her Majesty's Government.

"I have, &c.  
(Signed) "RAWSON W. RAWSON, *Colonial Secretary.*"

On Monday morning I dispatched the following:—

*"United States' Consulate, Cape Town, August 10, 1863.*

"His Excellency Sir Philip E. Wodehouse.

"Sir,

"Your decision in the case of the 'Sea Bride' was duly received at 4 o'clock P.M. on Saturday. In communicating that decision you simply announce that the vessel was, in your opinion, and according to evidence before you, a legal prize to the 'Alabama;' but you omit to state the principle of international law that governed your decision, and neglect to furnish me with the evidence relied upon by you.

"Under these circumstances I can neither have the evidence verified or rebutted here, nor am I enabled to transmit it as it stands to the American Minister at London, nor to the United States' Government at Washington. An invitation to be present when the *ex parte* testimony was taken was not extended to me, and I am therefore ignorant of the tenor of it, and cannot distinguish the portion thrown out from that which was accepted. If your decision is that the neutral waters of this Colony only extend a distance of three miles from land, the character of that decision would have been aptly illustrated to the people of Cape Town had an American war-vessel appeared on the scene, and engaged the 'Alabama' in battle. In such a contest with cannon carrying a distance of six miles (three over land), the crashing buildings in Cape Town would have been an excellent commentary on your decision.

"But the decision has been made and cannot be revoked here, so that further comment at present is, therefore, unnecessary. It can only be reversed by the Government you represent, which it probably will be when the United States' Government shall claim indemnity for the owners of the 'Sea Bride.'

"An armed vessel named the 'Tuscaloosa,' claiming to act under the authority of the so-called



Confederate States, entered Simon's Bay on Saturday the 8th instant. That vessel was formerly owned by citizens of the United States, and while engaged in lawful commerce was captured as a prize by the 'Alabama.' She was subsequently fitted out with arms by the 'Alabama' to prey upon the commerce of the United States, and now, without having been condemned as a prize by any Admiralty Court of any recognized Government, she is permitted to enter a neutral port in violation of the Queen's Proclamation, with her original cargo on board. Against this proceeding I hereby most emphatically protest, and I claim that the vessel ought to be given up to her lawful owners. The capture of the 'Sea Bride' in neutral waters, together with the case of the 'Tuscaloosa,' also a prize, constitute the latest and best illustration of British neutrality that has yet been given.

"I have, &c.  
(Signed) "WALTER GRAHAM, *United States' Consul.*"

On the same day I received the following :—

"Sir, "Colonial Office, August 10, 1863.  
"I am directed by the Governor to acknowledge the receipt of your letter of this date, and to state with reference to that part of it which relates to the 'Tuscaloosa,' that his Excellency is still in correspondence with the Commander-in-chief respecting the character of that vessel, and the privileges to which she is entitled.

"I have, &c.  
(Signed) RAWSON W. RAWSON, *Colonial Secretary.*"

I did not reply to the foregoing until Wednesday the 12th instant, when I sent the following :—

"Sir, "United States' Consulate, Cape Town, August 12, 1863.  
"Upon receiving your last communication to me dated the 10th instant, I deemed it simply a report of progress on one subject treated of in my last letter to your Excellency, and I have therefore waited anxiously for the receipt of another letter from the Colonial Secretary communicating the final result in that case. Failing to receive it, and hearing yesterday p.m. that the 'Tuscaloosa' would proceed to sea from Simon's Bay to-day, I applied for an injunction from the Supreme Court to prevent the vessel sailing before I had an opportunity of showing by witnesses that she is owned in Philadelphia in the United States; that her true name is 'Conrad;' that she has never been condemned as a prize by any legally constituted Admiralty Court; and that I am *ex officio* the legal agent of the owners, underwriters, and all others concerned. I have not yet learned the result of that application, and fearing that delay may allow her to escape, I would respectfully urge you to detain her in port until the proper legal steps can be taken.

"I am well aware that your Government has conceded to the so-called Confederate States the rights of belligerents, and is thereby bound to respect Captain Semmes' commission; but having refused to recognize the 'Confederacy' as a nation, and having excluded his captures from all the ports of the British Empire, the captures necessarily revert to their real owners, and are forfeited by Captain Semmes as soon as they enter a British port.

"Hoping to receive an answer to this and the preceding letter as early as possible, and that you will not construe my persistent course throughout this correspondence on neutral rights as importunate, or any remarks as inopportune, I have, &c.

(Signed) "WALTER GRAHAM, *United States' Consul.*"

Late on the same day I received the following :—

"Sir, "Colonial Office, August 12, 1863.  
"I am directed by the Governor to acknowledge the receipt of your letter of this date, and to acquaint you that it was not until late last evening that his Excellency received from the Naval Commander-in-chief information that the condition of the 'Tuscaloosa' was such as, as his Excellency is advised, to entitle her to be regarded as a vessel of war.

"The Governor is not aware, nor do you refer him to the provisions of international law by which captured vessels, as soon as they enter our neutral ports, revert to their real owners, and are forfeited by their captors. But his Excellency believes that the claims of contending parties to vessels captured can only be determined in the first instance by the Courts of the captor's country.

"The Governor desires me to add that he cannot offer any objection to the tenor of the correspondence which you have addressed to him on this subject, and that he is very sensible of the courtesy you have exhibited under such very peculiar circumstances. He gives you credit for acting on a strict sense of duty to your country.

"I have, &c.  
(Signed) "RAWSON W. RAWSON, *Colonial Secretary.*"

On the 17th instant (Monday) I wrote the following letter :—

"Sir, "United States' Consulate, Cape Town, August 17, 1863.  
"I have delayed acknowledging the receipt of your last letter dated the 12th August on account of events transpiring, but which have not yet culminated so as to form the subject of correspondence.  
"Your decision that the 'Tuscaloosa' is 'a vessel of war,' and by inference a prize, astonishes me, because I do not see the necessary incompatibility. Four guns were taken from on board the 'Talisman' (also a prize) and put on board the 'Conrad' ('Tuscaloosa'), but that transfer did not change the character of either vessel as a prize, for neither of them could cease to be a prize till it had been condemned in an Admiralty Court of the 'captor's country,' which it is not pretended has been done. The 'Tuscaloosa,' therefore, being a prize, was forbidden to enter Simon's Bay by the Queen's



Proclamation, and should have been ordered off at once, but she was not so ordered. Granting that Her Majesty's Proclamation affirmed the right of Captain Semmes as a 'belligerent' to take and to hold prizes on the high seas, it just as emphatically denied his right to hold them in British ports. Now, if he could not hold them in Simon's Bay, who else could hold them except those whose right to hold them was antecedent to his—that is, the owners?

"The 'Tuscaloosa' remained in Simon's Bay seven days with her original cargo of skins and wool on board. This cargo, I am informed by those who claim to know, has been purchased by merchants in Cape Town; and if it should be landed here directly from the prize, or be transferred to other vessels at some secluded harbour on the coast beyond this Colony, and brought from thence here, the infringement of neutrality will be so palpable and flagrant that Her Majesty's Government will probably satisfy the claims of the owners gracefully and at once, and thus remove all cause of complaint. In so doing it will have to disavow and repudiate the acts of its Executive Agents here—a result I have done all in my power to prevent.

"Greater cause of complaint will exist if the cargo of the 'Sea Bride' is disposed of in the same manner, as I have reason to apprehend it will be when negotiations are concluded; for being originally captured in neutral waters, the thin guise of neutrality would be utterly torn into shreds by the sale of her cargo here.

"The 'Georgia,' a Confederate war-steamer, arrived at Simon's Bay yesterday, and the 'Florida,' another vessel of the same class, has arrived or is expected hourly at Saldanha Bay, where she may remain a week without your knowledge, as the place is very secluded. The 'Alabama' remained here in Table Bay nearly four days and at Simon's Bay six days; and as the 'Tuscaloosa' was allowed to remain at Simon's Bay seven days, I apprehend that the 'Georgia' and 'Florida' will meet with the same or even greater favours. Under such circumstances further protests from me would seem to be unavailing, and I only put the facts upon record for the benefit of my Government and officials possessed of diplomatic functions.

"I have, &c.  
(Signed) WALTER GRAHAM, *United States' Consul.*"

I have not as yet received any answer to the foregoing letter, and I have little else to communicate beyond what is embraced in my correspondence.

The "Georgia" reports no captures since she left Bahia, Brazil. The "Alabama" and "Tuscaloosa" are cruising on this coast near Table Bay.

No American war-ships have yet appeared here, but they are anxiously looked for.

Two merchants from this place have gone to Saldanha Bay to buy prize cargoes; when they return I will watch their proceedings closely.

A company of speculators offered Captain Semmes 4,000*l.* for the "Sea Bride" and cargo, and he would have taken it, but he wanted a bond that they would not revert to the enemy. They offered me a large bribe if I would give my authority to have them sold here for the benefit of the underwriters, they asking 7,000*l.* for the ransom; but I refused to give them any authority to sell. This was before Captain Semmes spoke of the bond.

Should anything else occur in connection with this affair I will let you know as soon as any mail leaves here.

\* \* \* \* \*  
I have, &c.  
(Signed) WALTER GRAHAM, *United States' Consul.*

No. 3.

*Sir F. Rogers to Mr. Hammond.*

Sir,

*Downing Street, September 29, 1863.*

I AM directed by the Duke of Newcastle to transmit to you, for the consideration of Earl Russell, the inclosed copy of a despatch from the Governor of the Cape of Good Hope, reporting the arrival at the Cape of the Confederate steamer "Alabama," and requesting instructions on many questions that have arisen from the state of affairs consequent on the presence of this vessel in the Colony.

I am, &c.  
(Signed) F. ROGERS.

Inclosure 1 in No. 3.

*Governor Sir P. E. Wodehouse to the Duke of Newcastle.*

(Extract.)

*Government House, Cape Town, August 19, 1863.*

I BEG to take this opportunity of making your Grace acquainted with what has occurred here in connection with the visit of the Confederate States' steamer "Alabama."

On Tuesday the 4th instant I received a letter from the Commander of that vessel, dated the 1st August at Saldanha Bay, announcing his having entered that bay with a view to effecting certain repairs, and stating that he would put to sea as soon as they were completed, and would strictly respect our neutrality.



When this intelligence was received, the United States' Consul called on me to seize her, or at any rate to send her away instantly; but as the vessel which brought the news reported that the "Alabama" was coming immediately to Table Bay, I replied that I could not seize her, but would take care to enforce the observance of the neutral regulations.

On the next day, about noon, it was reported from the signal station that the "Alabama" was steering for Table Bay from the north, and that a Federal barque was coming in from the westward; and soon after, that the latter had been captured and put about. A little after 2 p.m. the United States' Consul called to state that he had seen the capture effected within British waters; when I told him he must make his statement in writing, and an investigation should be made. I also, by telegram, immediately requested the Naval Commander-in-chief to send a ship of war from Simon's Bay. The "Alabama," leaving her prize outside, anchored in the bay at 3.30 p.m., when Captain Semmes wrote to me that he wanted supplies and repairs, as well as permission to land thirty-three prisoners. After communicating with the United States' Consul, I authorized the latter, and called upon him to state the nature and extent of his wants, that I might be enabled to judge of the time he ought to remain in the port. The same afternoon he promised to send the next morning a list of the stores needed, and announced his intention of proceeding with all dispatch to Simon's Bay to effect his repairs there. The next morning (August 6th) the Paymaster called on me with the merchant who was to furnish the supplies, and I granted him leave to stay till noon of the 7th.

On the night of the 5th Her Majesty's ship "Valorous" had come round from Simon's Bay. During the night of the 6th the weather became unfavourable; a vessel was wrecked in the bay, and a heavy sea prevented the "Alabama" from receiving her supplies by the time arranged. On the morning of the 8th, Captain Forsyth, of the "Valorous," and the Port Captain, by my desire, pressed on Captain Semmes the necessity for his leaving the port without any unnecessary delay; when he pleaded the continued heavy sea and the absence of his cooking apparatus, which had been sent on shore for repairs, and had not been returned by the tradesman at the time appointed, and intimated his own anxiety to get away. Between 6 and 7 a.m. on Sunday the 9th he sailed, and on his way round to Simon's Bay captured another vessel, but on finding that she was in neutral waters, immediately released her.

In the meantime, the United States' Consul had, on the 5th August, addressed to me a written statement that the Federal barque "Sea Bride" had been taken "about four miles from the nearest land," and "already in British waters;" on which I promised immediate inquiry. The next day the Consul repeated his protest, supporting it by an affidavit of the master of the prize, which he held to show that she had been taken about two miles and a-half from the land; and the agent for the United States' underwriters, on the same day, made a similar protest. On the 7th, the Consul represented that the prize had, on the previous day, been brought within one mile and a-half of the light-house, which he considered as much a violation of the neutrality as if she had been there captured, and asked me to have the prize crew taken out and replaced by one from the "Valorous," which I declined.

I had, during this period, been seeking for authentic information as to the real circumstances of the capture, more particularly with reference to the actual distance from the shore, and obtained through the Acting Attorney-General statements from the keeper of the Green Point Lighthouse (this was supported by the Collector of Customs), from the signalman at the station on the Lion's Rump, and from an experienced boatman who was passing between the shore and the vessels at the time. Captain Forsyth, of the "Valorous," also made inquiries of the captain of the "Alabama" and of the Port Captain, and made known the result to me. And upon all these statements I came to the conclusion that the vessels were not less than four miles distant from land; and on the 8th I communicated to the United States' Consul that the capture could not, in my opinion, be held to be illegal by reason of the place at which it was effected.

In his reply of the 10th, the Consul endeavoured to show how indefensible my decision must be, if, in these days of improved artillery, I rested it on the fact of the vessels having been only three miles from land. This passage is, I think, of considerable importance, as involving an indirect admission that they were not within three miles at the time of capture. And I hope your Grace will concur in my view that it was not my duty to go beyond what I found to be the distance clearly established by past decisions under international law.

An important question has arisen in connection with the "Alabama," on which it is very desirable that I should, as soon as practicable, be made acquainted with the views of Her Majesty's Government. Captain Semmes had mentioned after his arrival in port, that he had left outside one of his prizes previously taken, the "Tuscaloosa," which he had equipped and fitted as a tender, and had ordered to meet him in Simon's Bay, as she also stood in need of supplies. When this became known to the Naval Commander-in-chief, he requested me to furnish him with a legal opinion; and whether this vessel could be held to be a ship of war before she had been formally condemned in a Prize Court; or whether she must not be held to be still a prize, and as such prohibited from entering our ports. The Acting Attorney-General, founding his opinion on Earl Russell's despatch to your Grace of the 31st January, 1862, and on Wheaton's "International Law," stated in substance that it was open to Captain Semmes to convert this vessel into a ship of war, and that she ought to be admitted into our ports on that footing.

On the 8th August the vessel entered Simon's Bay, and the Admiral wrote that she had two small rifled guns with a crew of ten men, and that her cargo of wool was still on board. He was still doubtful of the propriety of admitting her.

On the 10th August, after further consultation with the Acting Attorney-General, I informed Sir Baldwin Walker that, if the guns had been put on board by the "Alabama," or if she had a commission of war, or if she were commanded by an officer of the Confederate Navy, there must be held to be a sufficient setting forth as a vessel of war to justify her admission into port in that character.



The Admiral replied in the affirmative on the first and last points, and she was admitted.

The "Tuscaloosa" sailed from Simon's Bay on the morning of the 14th instant, but was becalmed in the vicinity until the following day, when she sailed about noon. The "Alabama" left before noon on the 15th instant. Neither of these vessels was allowed to remain in port longer than was really necessary for the completion of their repairs.

On the 16th, at noon, the "Georgia," another Confederate war-steamer, arrived at Simon's Bay in need of repairs, and is still there.

Before closing this despatch I wish particularly to request instructions on a point touched on in the letter from the United States' Consul of the 17th instant, viz., the steps which should be taken here in the event of the cargo of any vessel captured by one of the belligerents being taken out of the prize at sea, and brought into one of our ports in a British or other neutral vessel.

Both belligerents are strictly interdicted from bringing their prizes into British ports by Earl Russell's letter to the Lords of the Admiralty of the 1st June, 1861, and I conceive that a Colonial Government would be justified in enforcing compliance with that order by any means at its command, and by the exercise of force if it should be required.

But that letter refers only to "prizes," that is, I conceive, to the ships themselves, and makes no mention of the cargoes they may contain. Practically the prohibition has been taken to extend to the cargoes; and I gathered, from a conversation with Captain Semmes on the subject of our neutrality regulations, that he considered himself debarred from disposing of them, and was thus driven to the destruction of all that he took. But I confess that I am unable to discover by what legal means I could prevent the introduction into our ports of captured property purchased at sea, and tendered for entry at the Custom-house in the usual form from a neutral ship. I have consulted the Acting Attorney-General on the subject, and he is not prepared to state that the Customs authorities would be justified in making a seizure under such circumstances; and therefore, as there is great probability of clandestine attempts being made to introduce cargoes of this description, I shall be glad to be favoured with the earliest practicable intimation of the views of Her Majesty's Government on the subject.

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Inclosure 2 in No. 3.

*Mr. Adamson to Captain Semmes, C.S.N.*

Sir,

*Colonial Office, Cape Town, August 6, 1863.*

I AM directed by the Governor of this Colony to acquaint you that he has received from the Consul for the United States at this port a representation, in which he sets forth that an American barque was yesterday captured, by the ship which you command, in British waters, in violation of the neutrality of the British Government, and claims from him redress for the alleged outrage.

His Excellency will be glad, therefore, to receive from you any explanation you may wish to give as to the circumstances in which the capture was effected.

I have, &c.  
(Signed) L. ADAMSON,  
For Colonial Secretary.

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Inclosure 3 in No. 3.

*Captain Semmes, C.S.N., to Mr. Adamson.*

Sir,

*Confederate States' steamer "Alabama," Cape Town, August 6, 1863.*

I HAVE had the honour to receive your communication of this day's date, informing me that the United States' Consul at this port had presented to his Excellency the Governor a representation in which he sets forth that an American barque was yesterday captured by this ship under my command in British waters, in violation of the neutrality of the British Government, and requesting me to make to his Excellency such representation as I may have to offer on this subject.

In reply I have the honour to state that it is not true that the barque referred to was captured in British waters, and in violation of British neutrality; she having been captured outside all headlands, and a distance from the nearest land of between five and six miles. As I approached this vessel I called the particular attention of my officers to the question of distance, and they all agree that the capture was made from two to three miles outside of the marine league.

I have, &c.  
(Signed) R. SEMMES.

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No. 4.

*Mr. Hammond to the Secretary to the Admiralty.*

Sir,

*Foreign Office, October 30, 1863.*

WITH reference to your letter of the 26th ultimo, I am directed by Earl Russell to transmit to you herewith a copy of a Report which has been drawn up by the Law Officers of the Crown, on the



various questions arising out of the proceedings at the Cape of Good Hope, of the Confederate vessels "Georgia," "Alabama," and her reputed tender the "Tuscaloosa;" and I am to request that in laying the same before the Lords Commissioners of the Admiralty, you will move their Lordships to cause instructions in accordance therewith to be addressed to the British authorities at the Cape, for the guidance of their conduct in the event of a similar case occurring hereafter.

I have, &c.  
(Signed) E. HAMMOND.

Inclosure in No. 4.

*The Law Officers of the Crown to Earl Russell.*

My Lord,

*Lincoln's Inn, October 19, 1863.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters and their inclosures from the Admiralty and Colonial Office, relative to the proceedings at the Cape of Good Hope, of the Confederate vessels of war "Georgia," "Alabama," and her reputed tender "Tuscaloosa;" and to request that we would take the various questions raised in these papers, and especially the opinion given by the Acting Attorney-General of that Colony with regard to the latter vessel, into our consideration, and favour your Lordship with such observations as we might have to make thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that with reference to his letter of the 30th ultimo, he was directed by your Lordship to transmit to us the accompanying letter from Mr. Adams, relative to the proceedings of the "Alabama" off the Cape of Good Hope; and to request that we would take the same into our consideration together with the papers on this subject then before us, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That so far as relates to the capture of the "Sea Bride" made by the "Alabama," it appears, as we understand the evidence, to have been effected beyond the distance of three miles from the shore, and as we have already had the honour to report to your Lordship, that distance must be accepted as the limit of territorial jurisdiction according to the present rule of international law upon that subject. It appears, however, that this prize very soon after her capture was brought within the distance of two miles from the shore; and as this was contrary to Her Majesty's orders, it might have afforded just grounds (if the apology of Captain Semmes for this improper act, which he ascribed to inadvertence, had not been accepted by Sir Philip Wodehouse) for the interference of the authorities of the Cape Colony, upon the principles which we are about to explain.

2nd. With respect to the "Alabama" herself, we are clearly of opinion that neither the Government nor any other authority at the Cape could exercise any jurisdiction over her, and that whatever was her previous history, they were bound to treat her as a ship of war belonging to a belligerent Power.

Upon the third point raised with regard to the vessel called the "Tuscaloosa," we are not able to agree with the opinion expressed by the Attorney-General of the Cape Colony, that she had ceased to have the character of a prize captured by the "Alabama" merely because she was at the time of her being brought within British waters armed with two small-pounder guns, in charge of an officer, and manned with a crew of ten men from the "Alabama," and used as a tender to that vessel under the authority of Captain Semmes.

It would appear that the "Tuscaloosa" is a barque of 500 tons, captured by the "Alabama" off the coast of Brazil on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself as well as the vessel prize) still on board, and with nothing to give her a warlike character (so far as appears from the papers before us) except the circumstances already noticed.

We therefore do not feel called upon, in the circumstances of this case, to enter into the question whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent Government without being first brought *infra præsidia*, or condemned by a Court of Prize, the character of prize, within the meaning of Her Majesty's Orders, would or would not be merged in that of a national ship of war. It is enough to say that the citation from Mr. Wheaton's book by the Colonial Attorney-General does not appear to us to have any direct bearing upon this question.

Connected with this subject is the question as to the cargoes of captured vessels, which is noticed at the end of Sir Philip Wodehouse's despatch of the 19th of August last. We think that, according to the true interpretation of Her Majesty's orders, they apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters, as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reasons of any dealings with the captors.

We think it right to observe that the third reason alleged by the Colonial Attorney-General for his opinion assumes (though the fact had not been made the subject of any inquiry) that "no means existed for determining whether the ships had or had not been judicially condemned in a Court of competent jurisdiction;" and the proposition that, "admitting her to have been captured by a ship of war of the Confederate States, she was entitled to refer Her Majesty's Government, in case of any



dispute, to the Court of her States, in order to satisfy it as to her real character," appears to us to be at variance with Her Majesty's undoubted right to determine, within her own territory, whether her own orders, made in vindication of her own neutrality, have been violated or not.

The question remains, what course ought to have been taken by the authorities at the Cape, first, in order to ascertain whether this vessel was, as alleged by the United States' Consul, an uncondemned prize, brought within British waters in violation of Her Majesty's neutrality; and secondly, what ought to have been done if such had appeared to be really the fact? We think that the allegations of the United States' Consul ought to have been brought to the knowledge of Captain Semmes while the "Tuscaloosa" was still within British waters, and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the "Tuscaloosa's" papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of Her Majesty's orders made for the purpose of maintaining her neutrality, it would, we think, deserve very serious consideration whether the mode of proceeding in such circumstances most consistent with Her Majesty's dignity, and most proper for the vindication of her territorial rights, would not have been to prohibit the exercise of any further control over the "Tuscaloosa" by the captors, and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners.

We have, &c.  
(Signed)      ROUNDELL PALMER.  
                 R. P. COLLIER.  
                 R. J. PHILLIMORE.

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CIRCULAR.

Laklands.Confidential.

Downing Street,

12th February, 1864.

Sir,

I transmit to you, for your guidance in the event of prizes seized by Officers of the United States, or the Confederate States, being taken into a port of the Colony under your Government, copies of two Reports of the Law Officers of the Crown in the case of the "Chesapeake," an American steamer which was seized and taken into a port of Nova Scotia by a party of men who had embarked in her as passengers.

15th January, 1864.  
27th January, 1864.

These reports are to be regarded as Confidential, and are not to be published.

I have the honour to be,

Sir,

Your most obedient

humble Servant,

Governor Mackenzie





*Lincoln's Inn, 15th January, 1864.*

MY LORD,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us two despatches, and their enclosures, from Lord Lyons, respecting the case of the "Chesapeake," an American steamer plying between New York and Portland, which was seized and taken into a British North American port by a party of men who embarked in her as passengers at New York; and Mr. Hammond was to request that we would take these papers into consideration, and report to your Lordship our opinion whether the transaction is one in regard to which the British Government could interfere to seize the vessel, and hand over the parties to be tried in the United States.

We are also honoured with Mr. Hammond's several letters, dated respectively the 7th, 8th, 8th, 8th, and 9th instant, transmitting to us the further papers marked in the margin relating to this matter, for our consideration.

In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report:—

That we think Her Majesty's Government might properly have interfered to seize the "Chesapeake," and to deliver her up to the Government of the United States. There could be no doubt on this point, unless she were to be rewarded as a lawful prize of war, not abandoned by her captors. But even if she were so regarded, she was brought into British waters in contravention of Her Majesty's orders (which forbid either belligerent to bring any prize within British jurisdiction) for the manifest purpose of avoiding recapture; and her captors, while she was there, disposed of the greater part of her valuable cargo.

This was such an invasion of the territorial rights of Her Majesty, and such a disregard of Her Majesty's orders made for the preservation of her neutrality, as (having regard to the very peculiar circumstances of the case) would, in our opinion, fully warrant Her Majesty in availing herself of her territorial sovereignty to restore the ship to its original owners, without going through the form of any proceeding in the Vice-Admiralty Court of Nova Scotia; and, indeed, we think that in taking this case into the Vice-Admiralty Court (unless this has been done at the instance of any claimant) the Colonial Government may, perhaps, have acted without adequate consideration of the effect of Her Majesty's orders against bringing prizes into British ports; and that some embarrassment may possibly arise if the question of prize, or no prize should be entertained, and adjudicated upon, by that tribunal.

With respect to the delivery up of the captors for trial in the United States, this would clearly be proper under the 10th article of the Ashburton Treaty of 9th of August, 1842 (6 Hertslet, p. 859, 860), and the Imperial Statute, 6th and 7th Victoria, cap. 76, if, in taking the proceedings required by the statute before any justice of the peace, or other person having power to commit for trial persons accused of crimes against the laws of Nova Scotia, such evidence should be given upon oath as, according to the law of Nova Scotia, would justify the apprehension and committal for trial of the person accused upon a charge of piracy or of murder, if the acts alleged in support of the charge had been then committed; but not otherwise.

The question, therefore, whether the capture of the "Chesapeake" was an act of war or of piracy (on which the further question, whether murder was committed or not, also depends), must be considered, in the ordinary course of law, by the magistrate in Nova Scotia, before whom the charge with a view to extradition may be made. It must be remembered that if a case for extradition should be holden by the magistrate to have been made out by the evidence before him, the statute, though it empowers, does not peremptorily require the Governor to deliver up the persons accused; so that a doubtful case might still, if necessary, be reserved for consideration of Her Majesty's Government, but without the authority of the magistrate no extradition can take place. Warrants for the arrest of these persons appear to have been, in fact, granted



upon the demand of the United States Government by the proper Nova Scotia authorities, and we think rightly, because the seizure of a United States merchant vessel, and the homicide of one of her officers by persons who came on board her as ordinary passengers at New York, is *prima facie* piracy and murder. But we find it stated in some of the papers (see particularly the telegram No. 9 in Inclosure No. 2 of the letter from the Colonial Office, dated January 7, 1864) that Lieutenant Braine, who commanded the capturing party, partly represented himself to be a Confederate officer, and professed to have acted in this transaction not only under a commission or letters of marque from Mr. Jefferson Davis, but also under express instructions from the Confederate Government to capture this particular steamer. Should these representations prove to be correct, we apprehend that the acts in question would not properly be within the category of piracy or murder, but ought rather to be deemed by neutral nations to be acts of war; however unjustifiable the stratagem resorted to to obtain possession of the "Chesapeake" may be considered to be. And if the correctness of this view of the facts should be established by evidence, we think the British Government could not properly interfere to hand over these parties to be tried by the United States. The only other matters appearing in these papers which require notice from us are the proceedings of the United States ships "Ella and Annie" and "Dacota" within British waters, the proceedings thereon of the Nova Scotia Government, and the circumstances under which the man Wade effected his escape from Halifax.

Nothing can be more manifest than that a wilful and flagrant violation of Her Majesty's territory was committed by the officers of the United States ship "Ella and Annie," and that the facts were deliberately misrepresented by the commander of the "Dacota" to the Government at Halifax, while professing to show respect to Her Majesty's territorial rights. But as the United States Government have not attempted to justify these acts, or to take any advantage of them, but have, on the contrary, expressed their readiness and desire to make all proper and suitable reparation for them, it does not seem necessary for us to dwell further on that subject.

The conduct of Major-General Doyle, under these circumstances, seems to us to have been altogether becoming and proper, and to have adequately vindicated the honour and dignity of Her Majesty's Crown, without neglecting anything which, under the terms of the Ashburton Treaty, might still reasonably be due (notwithstanding the offence committed) to the United States Government.

It may, perhaps, be regretted that more effectual precautions were not taken to prevent the escape from justice of any of the persons landed from the "Dacota's" boat, for whose arrest warrants had been issued; but it cannot be imputed to the Colonial Government as a fault, that they did not foresee, or guard against, a proceeding so extraordinary as that which actually took place.

The escape of Wade by the assistance of certain of the bystanders (however illegal and censurable the conduct of those who abetted it may be) cannot justly be made the foundation of any international complaint by the United States Government. There is not the slightest reason to suppose that it was connived at by any of the Colonial authorities; and when the facts are borne in mind, that Wade had, up to the moment of his being put on shore, been kept under restraint by means absolutely unlawful and derogatory to Her Majesty's territorial rights (handcuffs, as we understand, were only at that instant removed from his hands), and that it was, therefore, necessary to give him some interval (however short) of liberty before the civil process of arrest could properly be executed, it is impossible not to see that the lawless steps taken for his escape, and the success which attended them were, in a very great degree, the consequences of the equally lawless acts previously committed by the naval officers of the United States.

We have, &c.,

(Signed)      ROUNDELL PALMER.  
                      R. P. COLLIER.  
                      ROBERT PHILLIMORE.

P.S. Since writing the above we have received Mr. Hammond's letter of the 14th inst., inclosing the printed papers relating to the ship "Orwell." We



do not, however, think that the case of the ship "Orwell" furnishes any rule for that of the "Chesapeake."

(Signed)

R. P.

R. P. C.

R. P.

*The Earl Russell.*

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*Lincoln's Inn, January 27th, 1864.*

MY LORD,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 21st inst., stating that, with reference to our Report of the 15th inst., he was directed by your Lordships to transmit to us the accompanying further despatch from Lord Lyons, and also a further letter and its enclosures from the Colonial Office, respecting the case of the "Chesapeake," and to request that we would take the same into our consideration, and furnish your Lordships with our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 25th inst., transmitting for our consideration a further despatch from Lord Lyons respecting this case.

In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report:—

That it appears to us expedient to make some observations upon the construction put upon the Treaty of Extradition and of the statutes 6 and 7 Vict., cap. 76 (which should be read in connexion with 8th and 9th Vict., cap. 120), by His Excellency the Governor of New Brunswick, in his despatch to His Grace the Duke of Newcastle (*see* 578).

1st. We think that the opinion of His Excellency, that he ought to issue the original warrant upon a bare requisition of the proper United States officer without reference to any depositions, is not quite correct. We think that, though the office of His Excellency in this matter is to a great degree ministerial only, nevertheless, he must exercise some discretion as to the reasonableness of the requisition, and must satisfy himself that it is founded upon some *prima facie* evidence of an offence within the meaning of the statutes; and the 2nd section of the statute (6 and 7 Vict., c. 76) appears to contemplate the laying of some depositions before the Governor previously to the issue of the original warrant.

We think, also, that care should be taken to adhere in all such cases to the rule (laid down in the Report of the Law Officers, dated 27th December, 1852) that the requisition should show upon the face of it that the particular case is within the terms of the statute. We make this observation because the requisition addressed by the United States Consul at St. John's to the Lieutenant-Governor of New Brunswick, on the 22nd December last, is on the face of it defective, as not showing that the alleged offence of piracy was committed within the jurisdiction of the United States, which is an indispensable requisite to bring the case within the Treaty and the Statute. It is true that the defect is not one which can vitiate the subsequent proceedings; and the depositions of Wade, Wollett, and Daniel Henderson which accompanied the requisition showed that the acts alleged to constitute the offence were done at sea, on board a ship (and therefore within the jurisdiction) of the United States; but this ought to have appeared on the face of the requisition itself.

2ndly. We agree with His Excellency that the magistrate to whom the Governor's Warrant is produced must, before in the first place issuing his own warrant for the apprehension of the person accused, and afterwards before committing him for trial, receive evidence which, in the language of the statute, "would justify the *apprehension and committal* for trial of the accused person," if he were to be tried for the crime of which he is accused in New Brunswick.

3rdly. We think that His Excellency is not, as he supposes himself to be, absolutely without discretion when the magistrate shall have certified to him the committal of the accused person; for although, generally speaking, it would



be his duty forthwith to order the person so committed to be delivered up to the proper United States authority; yet cases might possibly arise in which it would be his duty to refer the matter to Her Majesty's Government before taking that step.

4thly. We agree with the opinion of His Excellency and of the Law Officers of New Brunswick that the Government ought not to issue the original warrant unless it is alleged that the accused party is actually, at the time, within his jurisdiction.

5thly. The question, whether the counsel for the accused person are entitled to a copy of the requisition and accompanying depositions upon which the original warrant was founded, is not without difficulty. We incline, however, to the opinion that inasmuch as the requisition is the foundation of all the proceedings under the statute, and as the accused person may be heard by his Counsel before the Magistrate, and as the matter affects his personal liberty, it would be generally proper that his counsel should be allowed a copy of these papers.

With respect to the new despatches from Lord Lyons, it does not occur to us that they call for any detailed expression of opinion, over and above that which we have already had the honour to offer respecting the subject, in our former reports in the case of the "*Chesapeake*." The apology made by the United States Government for the violation of British territory by their officers appears to have been ample and unreserved; and on this point nothing further seems to be required. The only new statement of fact which seems to call for notice by Her Majesty's Government is Mr. Seward's allegation (see Lord Lyon's despatch of December 31, No. 929), that Braine and several others of the alleged pirates are "*themselves Nova Scotians*," in connection with which we may also notice the statement appearing in Mr. Gordon's despatches, or in some of the papers transmitted by him, that others of the same party are natives or inhabitants of New Brunswick. If this be so, it will be difficult for natural-born British subjects who have acted as these persons seem to have done, to exonerate themselves from the charge of piracy, and the defence, that they were in the service of the Confederate States, involves (at the very least) an admission that they violated the Foreign Enlistment Act.

We have, &c.,

(Signed)

ROUNDELL PALMER.  
R. P. COLLIER.  
ROBERT J. PHILLIMORE.

*The Earl Russell.*



Talklands

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CIRCULAR.

Confidential

Downing Street,  
11th October, 1865.

Sir,

Her Majesty's Government having received information that the ship "Shenandoah," after having been duly apprized that the Confederate Flag has ceased to be recognized by any Nation as the Flag of a Belligerent, has continued her captures and depredations on the high seas, have determined to instruct the Commanders of Her Majesty's ships of war forcibly to detain such vessel if she comes into port, and also forcibly to seize her upon the high seas if she be found sailing upon the high seas equipped as a vessel of war.

And inasmuch as such vessel, if she be equipped as a vessel of war, belongs to the Government of the United States, Her Majesty's Government have decided that such vessel, whether detained in one of Her Majesty's Ports or secured upon the high seas, ought to be delivered to the nearest authority of the United States, in one of the ports or harbors of the United States, or to an Officer of the United States' Navy in command of any vessel of war of the United States on the high seas.

It is the pleasure of Her Majesty, however, that the Crew should not be given up to the United States' Authorities, but allowed to go free in such manner as may at the time be most convenient.

I have accordingly to request that in case the "Shenandoah" should enter any port within your Government, you will, as far as practicable, take these instructions as your guide, and will in all cases afford the Commanders of Her Majesty's ships of war all countenance and assistance in your power towards carrying them into effect.

I have the honor to be,

Sir,

Your most obedient

humble Servant,

James Mackenzie

Edward Graham



Falklands

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CIRCULAR.

Confidential.

Downing Street,

11th October, 1865.

Sir,

With reference to my Circular of this day's date,  
I have the honor to transmit to you the Letter of Instructions  
addressed by the Lords Commissioners of the Admiralty to Rear  
Admiral The Honorable S. Denman, or Senior Officer, Panama,  
with a copy of the Law Officers' Opinion respecting the character of  
the "Shenandoah," referred to in that letter.

1st October, 1865.

21st September, 1865.

I have the honor to be,

Sir,

Your most obedient

Humble Servant,

Edward Forster

James Mackenzie



*Mr. Romaine to Rear-Admiral Denman, or Senior Officer, Panama.*

Sir,

*Admiralty, October 1, 1865.*

21st September, 1865.

I AM commanded by my Lords Commissioners of the Admiralty to send you herewith, for your information and guidance, a copy of the Opinion of the Law Officers of the Crown, as to the line of conduct to be adopted by any of Her Majesty's cruizers in the event of their falling in with the "Shenandoah," and you are to give the necessary instructions to the Commanding Officers of the ships under your orders, in accordance with that Opinion.

You are at liberty to communicate these Instructions to the Commander of any cruizer of the United States' Navy; and, without actually detaching any of the vessels under your command in pursuit of the "Shenandoah," you may render any assistance in your power in putting an end to the mischievous career of this vessel.

Further instructions will be sent by the next mail for your guidance in dealing with the "Shenandoah," in the event of her being captured by one of the ships under your orders.

I am, &c.

(Signed) W. G. ROMAINE.

*Rear-Admiral the Hon. J. Denman,  
or Senior Officer, Panama.*

*The Law Officers of the Crown to Earl Russell.*

My Lord,

*Lincoln's Inn, September 21, 1865.*

September 14th.

WE are honored with your Lordship's commands, signified in Mr. Hammond's letter of the 18th of September instant, stating that with reference to our report of the 4th instant, he was directed by your Lordship to transmit to us a letter from the Admiralty enclosing the draft of an Instruction which the Lords Commissioners propose to address to Rear-Admiral Denman, directing him to treat the "Shenandoah" as a pirate; and to request that we would take this matter into our consideration and favour your Lordship with our opinion whether by the laws of this country the "Shenandoah" could be treated in a British Court as a pirate.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honor to report—

That having regard to the fact that the "Shenandoah" belongs, if she be a vessel of war, to the United States, and in that case is sailing and acting without a Commission from that Government; and, if she be a merchant vessel, is engaged in the seizure and destruction of other merchant vessels, though such vessels only at present appertain to the country of the United States, and to the fact that the "Shenandoah" has been apprised that the Confederate Flag has for some time ceased to be recognized by all Nations,—We think it is lawful to instruct the Commanders of Her Majesty's ships to forcibly detain such vessel if she comes into port, and also forcibly to seize her upon the high seas if she be found equipped as a vessel of war and sailing without the Commission of any State *de jure* or *de facto* recognized by Her Majesty's Government.

We think that, *prima facie*, such a vessel would be liable to be treated in a British Court as a pirate.

We have, &c.

(Signed) R. PALMER.  
R. COLLIER.  
R. PHILLIMORE.

*The Earl Russell, K.G.,  
&c. &c. &c.*