# A LEGAL VIEW OF THE SEIZURE OF MESSRS MASON AND SLIDELL

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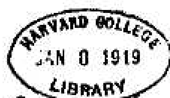


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All the facts of this case have not yet been officially communicated. We will assume, however, that the English mail steam-packet Trent was visited beyond the distance of a marine league from the shore, and that the neutral waters within that distance were not used by the United States' cruiser in watching her opportunity for the exercise of a belligerent right in the adjacent seas.

Mr. Webster, the most distinguished American expounder of international law, in his official correspondence with Lord Ashburton, declared that "a vessel on the high seas, beyond the distance of a marine league from the shore, is regarded as part of the territory of the nation to which she belongs." He also, in a subsequent letter to the same functionary, held the following language: "The ocean is the sphere of the law of nations; and any merchant vessel on the seas is by that law under the protection of the laws of her own nation, and may claim immunity, unless in cases in which that law allows her to be entered or visited."

The maritime right of visitation and search of neutral merchant vessels is a pure belligerent right, and can have no existence on the high seas during peace. It is allowed by the law of nations only in times of war, 1, for contraband, 2, for military persons, and 3, for despatches.

England, in the rightful exercise of her discretion, has adopted a theory of the present contest in America which has given great offence to the United States, although the latter were the first to furnish a precedent for its adoption by the course pursued in reference to the struggle between Spain and her colonies.

This theory assumes that the Confederate States are a nation actually at war with the United States, and having, so far as England is concerned, as perfect belligerent rights as any other nation whatever. It distinctly implies,—as there is no hybrid cross of nationalities known to the law of nations,—that Messrs. Mason and Slidell are the citizens of an independent nation other than the United States. We take it for granted that England will submit to all the legitimate consequences, whether injurious to herself or not, of her own theory, and that she will never lose sight of them in any reclamation she may make for an alleged violation of her neutral rights on board the Trent. It must be said, however, that the act of arrest, under a claim of belligerent right, involves, on the part of the United States, an emphatic renunciation of the theory recently adopted by their own government. The American Secretary of State, on the 30th of May last, in a despatch to the Minister of the United States at Paris, made the following explicit declaration: "The United States cannot for a moment allow the French Government to rest under the delusive belief that they will be content to have the Confederate States recognized as a belligerent power by States with which this nation is in amity. No concert of action among foreign states so recognizing the insurgents can reconcile the United States to such a proceeding, whatever may be the consequences of resistance."

If then, Messrs. Mason and Slidell are to be regarded as insurgent citizens of the United States, they are political offenders, and as such not only incapable of subjecting the neutral vessel on which they embark to the operation

of the right of search, but distinctly excepted from the provisions of the extradition treaty. The most cherished traditions of the history of England forbid her to sanction the forcible seizure of such persons while under the protection of her flag. Had they been undoubted citizens of the United States, guilty of atrocious felony, they could not have been seized by the United States on board the Trent on the high seas, without a flagrant infraction of the rights of neutral jurisdiction. It is perfectly clear that the arrest of such criminals could only be effected by a resort to the due process of the municipal law of England.

Were Messrs. Mason and Slidell, considering all the circumstances of the situation and voyage of the Trent, liable to capture as public enemies, and yet by a singular anomaly subject to punishment, under the municipal regulations of the United States, as domestic traitors?

Let us now direct our special attention to the English cases of capture for the transportation of despatches and of military persons, as they are generally appealed to for the justification of the present seizure.

What are despatches? Sir William Scott, in the case of the Caroline,* defined them to be, communications "on the public business of the State, and *passing* between public persons for the public service." We are not yet accurately informed that any communications answering to this, or indeed to any other description, were in course of conveyance, in the instance before us. It would be an abuse of language to designate a letter of credence a despatch.

In a popular sense, every rebel, private or public, in all his communications, is necessarily hostile as against the United States; and no act of his can be more offensively hostile than an attempt on his part to establish relations of amity between his government and a foreign State. But despatches must be of a *hostile and illegal character*, in the

* 6 Rob. Adm. Rep., p. 461.

sense of international law,* in order to subject the carrying ship to the appropriate penalty of confiscation.

In the examination of the cases, we must never lose sight of the nature of the voyage of the vessel. Was her voyage between the ports of one of the belligerents? Was it from a neutral port to a port of one of the belligerents? Was it from a port of one of the belligerents to a neutral port, or was it between two neutral ports?

The carrying by a neutral ship of despatches of the enemy, from his colonial port and colonial government to his home government, was decided by Sir William Scott, in the case of the Atalanta,† to be a criminal interposition in the war, impressing a hostile character upon the ship and subjecting her to the penalty of confiscation. Such despatches, he declared, must be of a *hostile* character on every *a priori* presumption.

The same illustrious judge, however, in 1808, during the war between England and France, in the case of the Caroline,‡ an American vessel, seized for conveying, from the neutral port of New York to Bordeaux, despatches for the French government from the French ambassador and consul resident in the United States, decreed restitution of the vessel. But inasmuch as, in his opinion, a neutral merchant vessel is under no obligation to carry the enemy's despatches to the enemy's port and government, he admitted the captor's right to inquire, before a prize-court, into the nature of the despatches,—there being no conclusive presumption of their hostile character in this case, as in that of the Atalanta. He proceeds to observe: "The neutral country has a right to preserve its relations with the enemy, and you are not at liberty to conclude that any communication *between them* can partake, in any degree, of the nature of hostility *against you*. The enemy may have his

* 1 Kent, p. 152. The Madison, Edwards' Adm. Rep., p. 226.
† 6 Rob. Adm. Rep., p. 440. ‡ Ibid., p. 461.

hostile projects to be attempted with the neutral State; but your reliance is on the integrity of that neutral state that it will not favor nor participate in such designs, but as far as its own councils and actions are concerned, will oppose them.

"And if there should be private reason to suppose that this confidence in the good faith of the neutral state has a doubtful foundation, that is matter for the caution of the government, to be counteracted by just measures of preventive policy, but is no ground on which this court can pronounce that the neutral carrier has violated his duty by bearing despatches, which, as far as he can know, may be presumed to be of an innocent nature, and in the maintenance of a pacific connection."

In 1810, during the hostilities between England on the one hand and France and Denmark on the other, an English cruiser captured the neutral American ship Madison,* on her voyage home from a French port. She was found to be the carrier of despatches from the government of Denmark to the Danish consul-general, resident at Philadelphia. Sir William Scott held that, under the circumstances of the case, the conveyance of the despatches did not affix a hostile character to the ship, and that, though the ship was justly subject to the inconvenience of seizure and detention for inquiry into the character of the despatches, she was not liable to confiscation.

He expounds the law, in this case, in the following language: "Now, I am of opinion, that a communication from the *Danish* government to its own consul in *America*, does not necessarily imply any thing that is of a nature hostile or injurious to the interests of this country. It is not to be so presumed; such communications must be supposed to have reference to the business of the consul-general's office, which is to maintain the commercial relations of

* Edwards' Adm. Rep., p. 224.