

We have two questions pending in our relations with Spain which are separate and distinct in themselves and should by no means be confounded in diplomatic treatment. The first is that of reparation for the unwarranted seizure of the brig Mary Lowell and her cargo while in neutral waters, and the violation of the territorial rights of the United States in the capture of two persons and their extradition from the schooner Lizzie-Majors while sailing on the high seas under the American flag. The second question is that of recognition of the state of actual war existing in Cuba and the proclamation of our neutrality between the parties, which carries with it the right to each to purchase supplies in our territory and the friendly admission to our ports of the national ships of each of the belligerents.

This right of search and capture is a belligerent right, and can be exercised lawfully, under the existing provisions of international law, only when war has been formally proclaimed. This has not been done by Spain in the present instance, and therefore even those articles which are admitted to be contraband of war are not legally subject to seizure on the high seas by the Spanish cruisers. In the present instance the case of Spain is made worse by the proclamation of General Dulce, of the 24th of March last, which assumes the extraordinary powers recited in the following clause:—"Vessels which may be captured in Spanish waters, or in the free seas neighboring to this island, with cargoes of men, arms and munitions, or of goods that may in any way contribute to promote the insurrection in this province, whatever may be their port of departure or destination, after examination of their papers and register, shall be considered in fact enemies of the integrity of our territory and treated as pirates, in accordance with the laws of the Spanish armada."

In making our demand for reparation in the cases of the Mary Lowell and the Lizzie Majors it will not suffice that indemnity for the private wrong be made; but the government owes it to its own honor and to the safety of the American seas that this extraordinary proclamation of General Dulce be withdrawn. As for the private wrong in the case of the Mary Lowell, Spain cannot claim the right of search and capture on the high seas previous to a declaration of war, and even after this preliminary step she cannot obtain the right to invade neutral territory. If the Mary Lowell were then even laden with arms and ammunition for the insurgent Cubans her capture on the high seas would have been illegal; for in time of peace nothing is contraband. The open seas are free to all traders, except when the acknowledged consent of nations gives certain rights to parties engaged in war. The case of the passengers of the Lizzie Majors requires no argument. It is too plainly a wrong, and must be redressed in a manner adequate to the outrage that has been committed.

The question has a wide bearing in the manner of redress. As Spain acted without notification, we might redress the injury in the same manner by seizing sufficient Spanish property to indemnify the American merchant if indemnity is refused, and by placing a suitable force off the port of Havana and preventing the egress of Spanish war vessels that commit these outrages, if the offensive proclamation of General Dulce is not withdrawn. It was in a similar posture of affairs that the United States took like measures in regard to the French republic, when Congress, by the act of July 7, 1793, repealed existing treaties with that Power, and on the 9th of July authorized the capture of French cruisers and traders. There was no declaration of war, no interference with neutral Powers, and reprisals were continued with such success in 1793 and 1795 that early in 1800 France came to terms by treaty. We would add, for the special information of Secretary Fish, that since the year 1800 the United States has not receded in material and moral power.

The second question—that of recognition—is in form nothing more than an announcement that war is going on between Spain and the people of Cuba, and declaring the neutrality of the United States in the contest. This places both parties on an equal footing in the procurement of means from the United States and in the use of our ports by their vessels. If it is not done then the conflict is ignored officially, and Spain may claim to be alone entitled to derive from our shores whatever she may choose to purchase in order to destroy the Cubans and their hopes. This measure is a proper and an indispensable preliminary to the recognition of the Cuban government which the House of Representatives has anticipated by its action. If we fail to put ourselves in this position of neutrals, by recognizing the existence of the conflict, how are our own citizens to be notified that they have duties to observe and that their property is in danger of capture? In peace arms and powder are lawful objects of traffic, and they become contraband only when war is declared. In the one case they are free, in the other they are forfeited by capture.

This, then, is the position of the question. Spain is at this moment waging war against the Cubans, but gives other Powers no notification, and the United States gives its citizens no note of warning. The government must, therefore, either protect the vessels of our citizens, whatever be the cargo, or else recognize the existence of war. This will make warlike stores contraband, and give to Spain the right to capture and confiscate; but it will also give the belligerent right to the Cubans in accordance with the measure meted out to ourselves by Spain during the rebellion of the South. Until this is done the ordinary conditions of peace prevail in our intercourse with Cuba, and our government is bound to protect our trade against any intrusion by Spanish cruisers, be the cargoes what they may—arms and munitions of war being as lawful in peace as corn or cotton. If Spain does notify us of hostilities then the United States must proclaim its neutrality with the contestants, which, while it will leave our traders open to the penalties of contraband of war, will also confer on the Cubans, as on Spain, the rights of belligerents. It is this step which is required in the interests of civilization and humanity.