

force as to lead me to conviction of the propriety of presenting the subject to your notice, and with your approbation, to the notice of Congress.

I have the honor to be, very respectfully, your obedient servant,  
C. CUSHING.

The PRESIDENT.

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## NEUTRALS' TITLE TO SHIPS OF BELLIGERENTS.

OPINION OF ATTORNEY GENERAL CUSHING.

ATTORNEY GENERAL'S OFFICE. }  
8th October, 1855. }

SIR:—Your letter of the 6th instant, communicating a letter of the Secretary of State, which gives information that “this government will feel bound to maintain the right of citizens of the United States to purchase vessels belonging to subjects of any of the parties to the war, in every case where the purchase shall have been made in good faith, and the property shall have been delivered,” and also a letter from the Collector of the port of Boston, inquiring what document shall be given to any such vessel, to authenticate her title to protection as the property of a citizen of the United States,—has been duly considered.

I beg leave to refer, in the first place, to the accompanying opinion on the general question, prepared on the 7th of August, 1854, at the call of the Secretary of State. See Law Register, August, 1855.

In addition to what appears in that paper, permit me to say, that subsequent reflection has but served to confirm the conclusions therein expressed.

Since that opinion was delivered, several treatises, of more or less value, on belligerent law have been published in Great Britain, adapted to current events, and to the present state of the science of jurisprudence. They agree unanimously, that the *bona fide* sale of the ships of belligerents to neutrals in time of war, is lawful and valid, unless made *in transitu* (Hosack, Rights of British and Neutral Commerce, p. 81; Loch, Legal Guide of Sailors and Merchants during War, p. 129; Wildman, Law of Search, Capture and Prize, p. 26; Hazlitt, Maritime Warfare, p. 208.

A still more important fact in this relation is the decision of the British High Court of Admiralty in a late case of a vessel captured as Russian, but claimed as the property of a Hamburger, by purchase since the commencement of hostilities. In this case the court (Dr. Lushington) says, "With regard to the legality of the sale, assuming it to be *bona fide*, it is not denied that it is competent to neutrals to purchase the property of enemies in another country, *whether consisting of ships or anything else. They have a perfect right to do so, and NO BELLIGERENT RIGHT CAN OVERRIDE IT.* The present inquiry, therefore, is limited to whether there has been a *bona fide* transfer or not." (The *Johanna Emilia*, English Reports in Law and Equity, vol. xxix, p. 562.)

Thus it is perceived that now, in Great Britain, not only is it held that neutrals have right to purchase belligerent vessels by the law of that country, but also by the law of nations; that the right is "perfect," and that "no belligerent right can override it."

I am not aware of any assumed belligerent right adverse to this, except in a French regulation of the reign of Louis XVI., as follows :

"Regulation of July 26th, 1778, Article 7 :—Ships of enemy's construction, or which shall have been of enemy's ownership, cannot be regarded as neutral, or as belonging to allies, unless there be found on board certain documents, authenticated by public officers, certifying the date of sale or cession, and that such sale or cession had been made to the subject of an allied or neutral power previous to the commencement of hostilities, and that the said conveyance of an enemy's property to the subject of a neutral or an ally, has been duly registered in presence of the principal officer of the place from which the vessel sailed, and signed by the owner of the ship, or by person holding power of attorney from him. (Lebeau, *Nouveau Code des Prises*, tome ii., p. 342.)

This regulation is defended and commended in a recent French treatise on prize law, with singular inconsistency, considering the just pride which the authors express in view of the cotemporary success of the French and American doctrine of neutral rights in the matter of the immunity of merchandise on board of neutral ships

of commerce. (*Pistoye et Duverdy, Traité des Prises maritimes*, tome i., p. 350 ; tome ii., p. 1.)

It is remarkable, also, while they carefully expose the difference between the English and the French public law in the first case, yet they as carefully suppress all indication of that difference in the second case, although they quote several recent prize trials in the British Court of Admiralty, which involve inquiry on collateral relations of the same great question, and the due understanding of which in France required that the English rule should be stated, at least by way of commentary, if not of approbation. (Tome ii., p. 15.)

It is remarkable for the further reason that other French authors of deserved authority had pointedly condemned the regulation of Louis XVI. (See *Hautefeuille, Droits et Devoirs des Neutres*, tome iv.)

Rumor asserts that the regulation has been applied, during the present war, to the case of a Russian merchantman purchased by a Spaniard in the port of Cadiz.

But, considering the liberal character of the traditional public policy of France in the matter of neutral rights,—a policy, which, it is apparent in other respects, has the enlightened approval of the present Emperor of the French,—it is not to be presumed that the French Government will assert this regulation, adversely to the public law recognized not by neutrals merely like the United States, but by one of the two principal co-belligerents, Great Britain. We may rather anticipate that the Emperor, justly gratified to see England come up to the policy of France, in regard to neutral transportation of belligerent goods, will not choose to remain behind England in regard to the purchase and sale of belligerent ships.

It remains only to speak of the form of authentication to be conceded to belligerent ships purchased by citizens of the United States.

The act of Congress of March 26th, 1810, forbids the issue, by the United States of a "sea letter or other document certifying or proving" the ownership of such vessel. (2 Stat. at Large, p. 568.)

A certificate, in the precise form indicated by your letter, might contravene the provisions of the statute.

But such a certificate is not necessary, nor indeed, would it be the best document, of itself alone, to protect the property in a foreign prize court.

The English rule is well stated by Wildman, a reliable authority. He says:—

“The title of a neutral vendee to a merchant vessel sold by the enemy in time of war is valid, where the property is *bona fide* and absolutely transferred so as to divest the enemy of all future interest in it. \* \* The court looks singly to the bill of sale as a document, which is recognized by the law of nations; and the *ownership must be decided by it.*” (Ubi supra, p. 26.)

The French regulation is to the same effect, making the requisite proof to be a bill of sale, duly recorded by the principal officer of the port of departure. (Pistoye et Duverdy, tome ii., ch. 2, § 4.)

I think these authorities and the reason and analogies of the thing, indicate the proper course to be pursued here.

The Collector, or the Register of the Treasury, can lawfully receive and make a record of the bill of sale. He can lawfully authenticate the validity, in form and in substance, of the bill of sale. He can lawfully deliver to the owner a document certifying these facts, but without certifying the fact of ownership. This last fact is the legal consequence of the preceding facts. He can also certify that the owner is a citizen of the United States. And from the series of facts thus authenticated, will ensue the general consequence that the ship, supposing the transfer to have been *bona fide*, is entitled to protection as the lawful property of a citizen of the United States.

In fine, it is *authentication* of the bill of sale and of citizenship, which seems to be requisite from the United States, while the essence of the transaction, as between the belligerent and the neutral, is its *bona fides*, of which the documents are *prima facie* proof, subject to such investigation as the rules of evidence justify, which rules are in substance the same in the prize courts of Europe and America.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. JAMES GUTHRIE, *Secretary of the Treasury.*