TERRITORIAL JURISDICTION.

THE CREOLE,” 1841.

(Wheaton’s International Law, 8th Ed., 165, Note.)

The brig Creole, an American merchant vessel, sailed from a port in Virginia in 1841, bound to New Orleans, having on board one hundred and thirty-five slaves. A portion of the slaves rose against the officers and got complete possession of the vessel, killing one passenger and severely wounding the captain and others of the crew, in the struggle. They compelled the ship, under threat of death, to navigate the vessel to Nassau, where she arrived and came to anchor. At the request of the United States consul at Nassau, nineteen of the slaves, who were identified as having taken part in the acts of violence, were arrested by the local authorities, and held to await the decision of the British Government. As to the rest of the slaves, there was a question whether they got on shore and gained their liberty by their own act, or through the positive and officious interference of the colonial authorities, while the vessel was under the control of the consul and master. Mr. Webster, Secretary of State, addressed a letter to Lord Ashburton on this subject. His position is, that ‘if a vessel of the United States, pursuing lawful voyages from port to port along their own shore, are driven by stress of weather, or carried by unlawful force, into British ports, the government of the United States cannot consent that the local authorities in those ports shall take advantage of such misfortunes, and enter them for the purpose of interfering with the condition of persons or things on board, as established by their own laws. If slaves, the property of citizens of the United States, escape into British territories, it is not expected that they will be restored. In that case, the territorial jurisdiction of England will have become exclusive over them, and must decide their condition. But slaves on board of American vessels lying in British waters are not within the exclusive jurisdiction of England, or under the exclusive operation of English law; and this founds the broad distinction between the cases. * * * In the opinion of the government of the United States, such vessels, so driven and so detained by necessity in a friendly port, ought to be regarded as still pursuing their original voyage, and turned out of their direct course by disaster or by wrongful violence; that they ought to receive all assistance necessary to enable them to resume that direct course, etc. * * *’

“The United States Government demanded the restoration of the slaves, which was refused by the British Government, on the ground, that, being in fact at liberty within the British dominions, they could not be seized there when charged with no crime against British law, and while there was no treaty of extradition. This case was then submitted, as a private claim for pecuniary indemnity, to the commission under the convention of Feb. 8, 1853. The commissioners being unable to agree, it was by the terms of the convention, referred to an umpire, Mr. Joshua Bates, of London.

“In deciding the case, Mr. Bates stated two propositions of law: —
1. That, as the slaves were perfectly quiet, and on board an American ship under the command of the captain, the authorities should have seen that the captain was protected in his rights over them.

2. That, 'the municipal law of England cannot authorize a magistrate to violate the law of nations, by invading with an armed force the vessel of a friendly nation that has committed no offense, and forcibly dissolving the relations which, by the laws of his country, the master is bound to preserve and enforce on board.'

Mr. Dana criticises the decision of Mr. Bates in this case. "It may be conceived, as a general statement," he says, "that local authorities ought to give active aid to a master in defending and enforcing, against the inmates of his vessel, the rights with which his own nation has intrusted him, if these rights are of a character generally recognized among all nations, and not prohibited by the law of the place. But it may well admit of doubt, whether the local authorities must give active aid to the master against persons on board his vessel who are doing no more than peacefully and quietly dissolving, or refusing to recognize a relation which exists only by force of the law of the nation to which the vessel belongs, if the law is peculiar to that nation, and one which the law of the other country regards as against common right and public morals. The local authorities might not interfere to dissolve such relations, where the peace of the port or the public morals are not put in peril; but they might, it would seem, decline to lend force to compel their continuance. See also the adverse criticism of Hall (Int. Law., 3d Ed., p. 199).

In the case of the Fortuna, 1803 (5 C. Rob., 27), the ship was proceeded against for a violation of the blockade of the Weser. The master of the captured vessel gave as an excuse for entering the blockaded place, the want of provisions, and a strong westerly wind. Sir W. Scott held that "want of provisions" was not such an "imperative and over-ruling compulsion" as to excuse a breach of blockade. But on the other ground, after further proof, the vessel was restored.

In the case of United States v. Dickelman, 1875, 92 U. S., 520, the Supreme Court emphatically affirmed the rule that merchant vessels are subject to the local jurisdiction when in foreign ports.

Warr, C. J., in giving the opinion of the court said: "As to the general law of nations, the merchant vessels of one country visiting the ports of another for the purposes of trade subject themselves to the laws which govern the port they visit, so long as they remain; and this as well in war as in peace, unless it is otherwise provided by treaty."