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From the Author

A LETTER

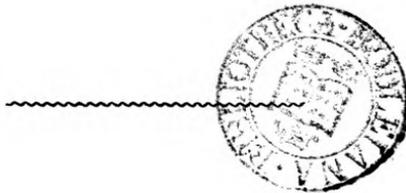
TO

LORD LYNDHURST,

ON

THE LATE DEBATE UPON CHINA.

BY SIR FITZROY KELLY, M.P.



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A L E T T E R,

ETC. ETC.

MY DEAR LORD LYNDHURST,—

An accident prevented me from taking part in the late debate upon China, in the House of Commons. I should, however, have been content, after the vote of the majority, to have left the subject to its own merits with the people of this country. But it appears to me that the principle upon which, in both Houses of Parliament, especially in the House of Lords, the conduct of our colonial authorities was defended, and upon which alone it can be justified, if avowed and affirmed by the British Government, is pregnant with danger to the honour and to the interests of this country; that, if this principle be acted upon by the governors of our colonies and the commanders of our military and naval forces in distant parts of the globe (as it must be if insisted on by the Government at home), we must sooner or later be involved in hostilities with other maritime states; and when we shall attempt to enforce it against a nation powerful enough, by its resistance, to bring it to a test and an issue, it will be denounced, rejected, and condemned with one voice and with one accord, by all the nations of the world.

It is impossible to escape the legal question. On

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the 8th of October, 1856, a trading ship or lorcha, called the Arrow, lying in the waters of the harbour of Canton, was boarded by certain Chinese officers, who apprehended two or more of the crew, subjects of China, on a charge of piracy and murder, and conveyed away others of the crew, also Chinese, into the city of Canton.

Other acts hereafter noticed are said to have been done, upon which there is a conflict of evidence; but the above facts are undisputed. The British governor of Hong-Kong, Sir John Bowring, and the British consul at Canton, Mr. Parkes, complained to Commissioner Yeh, who then exercised the powers of government at Canton, alleging that this lorcha was a British ship, and that therefore the act of the Chinese officers was a breach of the treaty of 1843, under which they were bound to have applied to the British authorities, and not to have entered on board the ship themselves. It is essential to bear in mind that the sole question raised between the contending parties was, whether this lorcha was a British ship or not. This was the single point at issue between them; and upon this alone the right of the British to demand redress, and to resort to reprisals or hostilities upon a refusal by the Chinese to grant redress, entirely and exclusively depended.

It is alleged by the British, and denied by the Chinese, that the British flag was flying, and was hauled down by the Chinese. If it be established that the ship was British, the insult to the flag was no doubt an aggravation of the wrong complained of; but if it was not British, the flag ought not to have been there, and the Chinese can no more be called to account for hauling it down, than if a

pirate had seized the ship from a subject of China, and sought to escape detection under the British flag.

The communications from the beginning between the British and the Chinese authorities demonstrate that the question between them was whether this lorcha was or was not a British ship. Parkes, in his first letter to Yeh, of the 8th of October, complains: "This morning a Chinese war-boat boarded " an *English* lorcha, the Arrow, lying at anchor in " the river."*

Parkes to Bowring, October 10 :—" Nothing can " be more unsatisfactory than the reply of the " Imperial Commissioner, who offers no redress or " apology, but upholds the acts of his officers " throughout, and denies that the lorcha is *British* " owned." †

Yeh (first letter to Parkes), October 10 :—" She " is not a foreign (meaning a British) lorcha, and it " is useless therefore to enter into any discussion " respecting her." ‡

Parkes to Bowring, October 11 :—" And is the " Imperial Commissioner to be at liberty to declare " a vessel to be *Chinese*-owned in the face of an " assurance given by the British Consul of her " *British* nationality?" §

Bowring to Parkes, October 11 :—" It is clear " that the Chinese authorities have violated the " ninth article of the supplementary treaty, which " requires that all Chinese malfaisants in *British*

* House of Commons Papers, p. 2. † Ibid. p. 4. ‡ Ibid. p. 6.

§ Ibid., p. 7. May not a Chinese here ask—"Then is the *British* Governor to be at liberty to declare a vessel to be *British*-owned in the face " of an assurance given by the *Imperial Commissioner* of her *Chinese* nationality?"

“ *ships* shall be claimed through the British authorities.” *

Parkes to Yeh, October 12 :—“ The treaty requires that all Chinese malfaisants in *British ships* shall be claimed through the British authorities.” †

Yeh to Parkes, October 14 :—“ Thus it had been ascertained by the previous examination that this lorcha is not the property of a foreigner (British subject). Hereafter, Chinese officers will on no account, without reason, seize the people belonging to a foreign (British) lorcha; but where Chinese subjects build for themselves vessels, foreigners (British) should not sell registers to them.” ‡
Thus both parties—Bowring and Parkes on the one side, Yeh on the other—put the whole case upon the single question, Was this lorcha a British ship? It is, unhappily for our country’s reputation, but too true, that, while Sir John Bowring and Consul Parkes strenuously and positively averred to Commissioner Yeh that this ship was a British ship, and entitled to the protection of the British flag, they themselves well knew that, if such had ever been the fact, it had lost its British character and its title to British protection, and had ceased to possess the right which had been claimed. For Bowring, in a letter to Parkes of October 11, § writes thus :—“ It appears on examination that the *Arrow* had no right to hoist the British flag; the licence to do so expired on the 27th of September, from which period she had not been entitled to protection.”

And, October 13 :||—“ I will consider the re-granting of the register of the *Arrow*, if applied for ;

* House of Commons Papers, p. 11.

‡ Ibid. p. 14.

§ Ibid. p. 10.

† Ibid. p. 12.

|| Ibid. p. 12.

“ but there can be no doubt that after the expiring of the licence protection could not legally be granted.”

Yet the same Sir John Bowring writes, in addressing Commissioner Yeh on November 14 :*—
 “ Whatever representations may have been made to your Excellency, there is no doubt that the lorcha Arrow lawfully bore the British flag, under the register granted by me; and that treaty obligations were violated by the seizure of her crew without the intervention of the Consul.”

This lamentable departure from truth, and honour, and fair dealing, introduces us to the second claim now put forward by the British Government in support of the acts of their officers, Sir John Bowring and Consul Parkes. It is now insisted, and upon the highest authority, that it is competent to the British Government and British governors in all our colonies, by any act of our own legislature, imperial or colonial, to declare a Chinese ship to be a British ship; to bind by that declaration the Chinese sovereign and people, and by international law to compel them to recognise and to treat their own Chinese ship, the property of their own Chinese subject, in their own Chinese port of Canton, as a British ship, and entitled to the privileges and the protection of the British flag. And it is yet further contended, that, whether by the law so made the ship is a British ship or not, if the British authorities simply allege that a ship is a British ship, whether the allegation be true or untrue, all foreign nations must admit it to be a British ship (though they know that it is not

* House of Commons Papers, p. 89.

one), and hold its flag inviolate accordingly.* Was this lorcha, however, a British ship?

1. Was it a British ship by the law of England, under the Acts of the Imperial Parliament, or under the legislative ordinance of Hong-Kong?

2. If by a law of this country this lorcha has been converted from a Chinese ship into a British ship, is that law binding upon the sovereign and people of China, so as to entitle the British authorities to call upon them to recognise their own ship, the property of their own subject, in their own port, as a British ship?

The first, and the less important question (except that, if it be determined against this country, it leaves our authorities wholly without justification), is whether this lorcha was a British ship either by Act of Parliament or under the ordinance of Hong-Kong?

1st. Was it a British ship by Act of Parliament? This question is easily answered. By the law of England no ship is, or ever was, a British ship unless *bonâ fide* owned by British subjects, by persons naturalised, or by denizens. Such is the natural, such is the legal meaning of the term British ship. From the earliest times, by the common law, by the statute law, and by the law of nations, a British ship has been a ship belonging to the sovereign or to the subjects of Britain; as a French ship or a Russian ship is a ship belonging to the sovereign or to the subjects of France or of Russia; and if in the intercourse between nations

* See *ante*, Parkes to Bowring, Oct. 11, p. 5; and the Lord Chancellor's argument, cited *post*, p. 18.

any other meaning were to be attached to the term, conflicts of laws and of rights, and confusion and mischief incalculable, would be the inevitable result. But reason and law coincide; for as well by the common law as by the Acts of Parliament relating to shipping, from the Navigation Act of 1660 to the Merchant Shipping Act of 1854, no ship could be a British ship unless it were the *bonâ fide* property of British subjects, persons naturalised, or denizens. The two latter classes of owners have been introduced in modern times; and until within a very few years the qualification of being British built was also essential to the character of a British ship. The question as it affects the lorchia is concluded by the express terms of the Merchant Shipping Act of 1854 (17 & 18 Victoria, cap. 104).

By the 17th section of this Act its provisions as to ownership and registering are made applicable not only to Great Britain, but to all her colonies throughout the world.

By the 18th section "No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description, That is to say:—

"(1) Natural-born subjects.

"(2) Persons made denizens by letters of denization, or naturalised by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or Ordinance of the proper legislative authority in any British possession."

There are other clauses and provisoes in this Act, but none affecting the present question.

This Act came into operation on the 1st of May, 1855; and therefore, unless repealed or varied in its

operation by the ordinance hereafter noticed, applied to and governed the whole of these transactions. If the state of the law at any earlier period be thought material, it may be observed that at no antecedent time could Chinese or any other foreigners, or any other classes of persons than those above enumerated, be the owners of a British ship; and that at the time of the treaty with China a ship must have been British built as well as British owned to be a British ship. Mr. Serjeant Shee, the learned editor of Lord Tenterden's great work on shipping, and who, to my amazement, contended in the late debate that this lorcha was a British ship, in the chapter upon "Pro-
 "perty in British Ships,"* treats of "what persons
 "may be registered as owners" in these words:—
 "The owners must be *subjects of Great Britain*; and
 "all natural-born subjects of the Queen may be re-
 "gistered as owners of British ships.† No foreigner,
 "unless made denizen or naturalised by Act of Par-
 "liament, or by Act or Ordinance of the legislative
 "authority of any of the British possessions abroad,
 "or authorized by any such Act to hold shares in
 "British shipping, and having taken the oath of
 "allegiance to Her Majesty, may directly or indi-
 "rectly have any part or share in the ship."

Whether then at the time when the treaty was made which secured immunity against search to English ships, or when the ordinance was promulgated, or when the Arrow was boarded, no ship was by the law of this country an English ship, or a British ship, unless *bonâ fide* owned by a British subject, or one naturalised or made a denizen. Fong-a-

* Ninth Edition; just before the Act of 1854 came into operation.

† 8 & 9 Vict. s. 89, c. 11; 12 & 13 Vict. s. 29, c. 17.

ming, the owner of the lorcha, possessed neither of these qualifications. The lorcha therefore, under British Acts of Parliament, was not a British ship.

The ordinance is next to be considered. It purports to enable Chinese residents at Hong-Kong, upon certain conditions, to apply for and obtain colonial registers, of which a certificate is to be granted; and the registration and the certificate enable the ship to trade in the harbours of the colony. It is assumed by Sir John Bowring that a Chinese ship thus registered becomes an English merchant-ship within the treaty.

It will be observed that it is upon the ships of Chinese residents at Hong-Kong that the character of British ships is said to be conferred. It is important, therefore, to see what description of persons may be invested with the rights of British subjects, and their ships of British ships. By the treaty (Art. 3) it is not the inhabitants of the island but the island itself that is ceded to Great Britain; and the article merely recites that it is obviously necessary and desirable that British subjects should have some port whereat they may careen and refit their ships, when required, and keep stores for that purpose.

The inhabitants at the time of the cession are said to have been under a thousand. These the Chinese Government never released from their allegiance, nor were they accepted or recognised by the British Government as British subjects. They were unnoticed in the treaty, and have never been naturalized or made denizens. It appears indeed to have been the policy of our Government at Hong-Kong to leave the nationality of the Chinese resorting to the island un-

changed. The Attorney-General of Hong-Kong, in August, 1855,* observes—"The Chinese population, now exceeding 60,000, hardly contains ten Chinese who can legally be called British subjects." The Chinese, therefore, at Hong-Kong are mere casual residents. They have never ceased to be Chinese subjects, or to owe allegiance to the Emperor of China. They cannot, as against China and its laws and authorities, cease to be Chinese, or acquire the rights or the character of British subjects, without the assent of China. And it has always been most unlikely that this assent should be given, or that the Government of China would part with any power or jurisdiction which it possesses over its own subjects at Hong-Kong; for we find, upon the authority of Sir John Bowring himself (Letter to the Earl of Clarendon, 23rd October, 1856),†—"A large portion of the Hong-Kong population is affiliated to the secret societies in China."

It may sound somewhat alarming to China to be told that fifty or sixty thousand of its subjects affiliated to secret societies in China may be invested, against its will and without its knowledge, with the character of British subjects, and their ships with the privileges and immunities of British ships.

Fong-a-ming, then, the owner of the lorcha, being still a subject of China, and not a British subject, or naturalised, or a denizen, the next question is—could a ship, his property, be legally made a British ship by an Act of the local legislature of Hong-Kong?

The Crown by its prerogative can legislate in a conquered colony, but under two restrictions :—

* Correspondence, p. 6.

† House of Commons Papers, p. 21.

1st. It cannot violate the principles of the British Constitution.

2ndly. It cannot repeal or alter an Act of Parliament.

This ordinance was made on the 3rd of March, 1855. By the Acts of Parliament then in force, no ship belonging to a Chinese could be registered as a British ship. The ordinance, then, which permitted the Chinese residents of Hong-Kong to register their ships as British ships was in violation of those Acts of Parliament, and illegal and void.

But the Merchant Shipping Act of 1854 is also fatal to this ordinance. That Act came into operation on the 1st of May, 1855. It expressly applies to all British colonies; and it contains no exception in favour of any Act of any colonial legislature. If, therefore, the ordinance had legalised the registration of the ship of a foreigner on the 3rd of March, it was repealed and made void by this Act on the 1st of May.

It is true that by the 547th section the Act of 1854 may be repealed, wholly or in part, by a legislative ordinance in any colony, as to ships registered in such colony. But the ordinance of repeal must be confirmed by the Queen in council; and the ordinance in question, besides having been made before the Act of 1854 came into operation, has never been confirmed by the Queen in council. The Act of 1854, therefore, expressly rendering the registration of any ship, the property of any foreigner, in any colony, illegal and void, is consequently fatal to the registration of the ships of the Chinese residents in the colony of Hong-Kong.

Thus it appears that by the statute law of this country this Chinese ship could not be registered as a British ship; and it is remarkable that the legal objection to this ordinance was clearly pointed out by the letter of the Board of Trade (through Mr. Booth) to Lord John Russell, of the 11th of June, 1855;* and by Lord John Russell notified to Sir John Bowring, by letter of 22nd of June, 1855.† But in defiance of this legal objection, and of the wise caution of Lord John Russell, whose letter must have reached Sir John Bowring in the course of the month of August, he recklessly permitted this Chinese vessel to be thus illegally registered under the ordinance on the 27th of September, 1855.

It has been well observed (originally, I believe, by Earl Grey in the House of Lords) that, even if this ordinance had been valid, and the registration had the effect contended for, the title of this lorcha to the protection of the British flag had ceased on the 8th of October, when she was boarded by the Chinese; the ship having been registered, and the certificate granted, for one year only, which expired on the 27th of September, 1856. This is denounced as a miserable technicality by the advocates of Sir John Bowring, and among others by the Prime Minister himself; and it is argued that the omission to renew the register was merely a non-compliance with our own municipal regulations. But this is not so. If a British subject, indeed, build a British ship and register it for a year only, and fail to renew the registration, although the ship may lose the privileges which registration confers, it would hardly be competent to a foreign State to deny to it the cha-

* Correspondence, p. 4.

† Ibid. p. 5.

racter of a British ship. But it must not be forgotten that this lorcha was a Chinese ship until the 27th of September, 1855; and assuming the entire validity of the ordinance, it became a British ship only by the fact of registration; and it is obvious that, if the certificate of registry alone entitled it to the British flag, and that certificate was for a year only, the moment the year expired it ceased to be that which the registration alone had made it, and became again what it was before.

It is indeed difficult in any point of view to see how the ordinance can make this lorcha an "English merchant ship" at all within the meaning of the treaty. The words of the 9th Article are these:—"If lawless natives of China, having committed crimes or offences against their own government, shall flee to Hong-Kong, or to the English ships of war, or *English merchant-ships*, for refuge; if it should be ascertained or suspected by the officers of the Government of China whither such criminals and offenders have fled, a communication shall be made to the proper English officer, in order that the said criminals and offenders may be delivered up." Now the "English merchant-ships" protected by this treaty must be such ships as were "English merchant-ships" at its date in 1843; and in 1843 no ship, the property of a Chinese, could by any possibility be an English merchant-ship. Accordingly it was unanswerably urged by Lord Ellenborough, Lord St. Leonards, and others, that we could not, by a subsequent law of our own, alter the description, or multiply the classes, of ships to be protected. The Chinese, having agreed to respect English merchant-ships, which then meant and were then under-

stood to be ships belonging to Englishmen, cannot be bound to respect Chinese ships belonging to Chinese because we think fit to make a law declaring that English shall mean Chinese, or Chinese shall mean English. They might well have said, "We are content to respect the ships of Englishmen, because we can trust to their good faith, and their good-will towards ourselves; but the ships of our own subjects resident at Hong-Kong, many thousands of whom we know and you know to be members of affiliated societies, rebels and traitors, we must be permitted to deal with as we please."

Is this argument carried too far? Suppose "English merchant-ships," by treaty with Russia, were made exempt from search for criminals in Russian ports. Could we, by registering a Russian ship, bought and owned by Polish residents in London, send it free from search, as an English merchant-ship, into Odessa? Could we lawfully shell and burn Odessa, and put to death its inhabitants, if Russia should presume in such a case to hold that a Russian ship, in a Russian harbour, owned and manned and freighted by Polish subjects of Russia, could not be made into an English ship, as against her, without her consent? When Dunkirk was made over to the French in 1662, if we had stipulated by the treaty that "English merchant-ships" should be free of all port-dues for twenty years, could we, by registering Dutch and Spanish ships, have made them "English merchant-ships," and sent them free into Dunkirk?

But if the ordinance had been before the treaty, has it by its own terms the effect of making "English merchant-ships" of the ships of Chinese residents at

Hong-Kong, such ships being in the port and waters of China at Canton? The 1st Article forbids the ships of British subjects to trade in the harbours of the colony, unless with a certificate of British registry, but confers no power to trade at Canton or elsewhere. The 6th Article enables Chinese residents, lessees of Crown lands at Hong-Kong, to obtain a colonial register. But the ordinance nowhere declares that the ship of a Chinese resident registered under it shall become a British ship, or an "English merchant-ship," or shall be at liberty to trade at all at Canton, or elsewhere than in the harbours of Hong-Kong; and it is absolutely silent as to any other right or character conferred by the registry or the certificate. How, therefore, this ordinance, whatever be its legal force, can be said, by registration under it, to convert a Chinese ship, the property of a Chinese subject, lying in a Chinese harbour, into an "English merchant-ship," within the meaning of the treaty, it must be left to Sir John Bowring, and to the Ministers of the Crown who defend him, to point out.

The ordinance, then, if it purport to make this ship a British ship, is made void by the Act of 1854. If it do not, how has this ship become an "English merchant-ship" within the treaty of 1843?

But the great and important question remains behind. Can Great Britain legislate for foreign states, and bind them by her legislation?

If the local legislature of a colony can by its ordinances declare a Chinese ship to be a British ship, and entitled against China to the protection of the British flag, it may in like manner declare a French ship or an American ship to be a British

ship, and entitle it against France or the United States to the like protection ; and if the legislature of this small island can so legislate, the imperial legislature of Great Britain must possess at least the same power, and may by an Act of the British Parliament make a Chinese, or a French, or an American ship to be a British ship, and China, and France, and the United States are bound by such legislation, and may be called upon by the law of nations to treat such ships, the property of their subjects and lying in their ports, as British ships. If this proposition had been advanced only by Sir John Bowring, and sought to be silently enforced against a nation like China too feeble to resist the claim however lawless and unjust, perhaps the demand and the submission to it might have been permitted to pass unnoticed. But unfortunately this strange and startling proposition has been adopted and insisted on not only by the Ministers of the Crown, but by the highest legal authority in this realm. And it is to this that I presume to call your Lordship's attention and the attention of the people of this country ; in order that the point, if possible, may be settled, and that it may be once for all determined whether the legislatures of Great Britain and her colonies may make laws affecting not only the subjects of foreign states, but the power of the rulers of those states over their own subjects, and within their own dominions ; and by the law of nations bind these rulers and their subjects to obey the laws so made.

In the debate in the House of Lords the law of nations was thus declared by the Lord High Chancellor :—“ Was this or was it not an infraction of the

“ treaty? Certainly; for as between us and China, the Arrow was undoubtedly a British ship. *If the British Government authorises a ship to go into a foreign port and carry the British flag, as between us and the foreign country this is certainly a British ship.* It may be that you had improperly authorised the use of the British flag; this may give the foreign authorities a right to redress as against you; and if Yeh had represented this to Sir John Bowring, and that officer had refused to attend to such a representation, he might have laid himself open to grave censure.”

Lord St. Leonards had stated the law of this country and the law of nations with perfect accuracy and precision. Upon which the Lord Chancellor again observes,—“ Therefore, my Lords, had this been entirely a foreign vessel, and unentitled to a British register, we, by the law of nations, were justified in the steps which we took.” Again, in answer to Lord St. Leonards:—“ What he (the Lord Chancellor) said was, that it depended upon the licence or register of each particular country to say whether a ship were a national ship or not. From that proposition he never could be shaken, and it was monstrous to assert that third persons were competent to decide a question of that nature. He maintained unhesitatingly that that was the principle of international law.”

Lord Wensleydale speaks to the same effect:—“ The Arrow, therefore, had the British colours and a British licence granted by Sir John Bowring. Whether the licence had expired at the time, he would afterwards consider. Assuming then that the licence existed, that gave a national character

“ to the vessel, and whether it was rightly given or
 “ not was not a matter which the Chinese could
 “ dispute by taking the law into their own hands.
 “ If improperly given by the officers of Government,
 “ the aggrieved party was bound to apply to our
 “ Government for redress.”

I must say that, until this doctrine came forth upon this high authority, I should have deemed it impossible that any jurist, or any statesman, in any country in the world, could have entertained such an idea. I thought that the law of nations had been certain and unquestionable, as it was laid down by your Lordship in the same debate. You are reported to have said,—“ Now, my Lords, allow me to lay
 “ down a principle which no one will successfully
 “ contest. It is this—That you may give any rights
 “ or any privileges to a foreigner, or to a foreign
 “ vessel, as against yourselves, but not as against
 “ foreigners. That is the answer to the case of the
 “ Manilla and two others of the same description, to
 “ which the noble Earl (Clarendon) has referred.
 “ You may give rights as against yourselves. You
 “ may pass a law for that purpose. But you cannot
 “ give any rights to the subject of a foreign country,
 “ by any of your laws, as against the country of
 “ which he is a subject. No man can by possibility
 “ with any shadow of reason dispute that proposition.
 “ You cannot, therefore, where you have a foreign
 “ ship owned by a foreigner, convert that vessel into
 “ an English ship so as to bring it within the terms
 “ of this treaty.”

But the reverse of all this is laid down by the Lord Chancellor; and unless there be one law of nations in the East, and another in the West, we are told,

upon his high authority, that we have only to declare a Chinese, or a French, or an American ship to be a British ship, and by the law of nations, as between us and those countries, it is a British ship, and must be treated and respected as such, under the British flag, even in the ports of China, of France, or of the United States.

If the effect of declaring a foreign ship to be a British ship were only to invest it with privileges in our own ports and waters, we might safely apply this principle to all the mercantile navies of the world. No foreign state would complain that we admitted its ships to the benefits we had conferred upon our own. But it seems to have been forgotten that by converting a foreign ship into a British ship, with all the advantages of a British register, we likewise impose upon it certain duties, obligations, and liabilities to which a foreign independent state can scarcely be expected to submit. Is then the law of nations as it is laid down by the Lord Chancellor? Can we legislate against foreign countries, and bind them by our legislation? Can we enact that a Chinese ship is a British ship, and call upon China to recognise it as a British ship in the harbours of China? Can we, by declaring a French ship to be an English ship, haul down the French flag and plant the British flag upon its masts, and call upon France to respect that flag in the harbour of Marseilles? If we can thus legislate against France, France can in like manner legislate against us. France may enact that every British ship bearing the British flag, the property of British subjects, is to be deemed a French ship, not only in French but in British ports. France may then, by the hands of a British subject, haul down

the British flag, and plant the flag of France in a British vessel in the river Thames.

But mark the further consequences. We pass an Act of Parliament like the ordinance of Hong-Kong, enacting, not that Chinese residents there, but French residents here, may register French ships at all our outports, and that they shall thereby become British ships. Monsieur Louis Blanc, a French subject, owing allegiance to the Emperor of the French, but resident in England (as Fong-a-ming is a resident at Hong-Kong), purchases a French ship in the harbour of Boulogne, brings it over to Folkestone, and registers it there as a British ship. It returns to Boulogne. By the law of France French ships under peril of forfeiture must bear the French flag, as English ships under the like penalty must bear the English flag. The ship of Louis Blanc, like the Chinese lorcha, in conformity to the law of England mounts the British flag, and lies at anchor in the harbour of Boulogne. The French authorities there, in strict obedience to their own laws, haul down the English flag, seize the ship as forfeited, and plant upon it the tricolor. If the Lord Chancellor and Lord Wensleydale be right, is not this a *casus belli*?

Consider the further consequences in reference to our navigation laws :—By an Act of our legislature, we convert a French ship into an English ship, which sails, with its French owner and a French crew, but under English colours, and anchors off Boulogne. By the provisions of the Merchant Shipping Acts of 1854,* our naval commanders upon any foreign station may, at the instance of the master or any one of the crew of any British ship, enter on board

* Sec. 260 and *seq.*

of it, and hold a Court there, and try the master and the whole crew, and dismiss them and appoint others in their place, and proceed with the trial to judgment and execution. Is it by the law of nations that the sovereign and the people of France must permit the commander of the Channel Fleet to enter their French ship, and seize, and try, and condemn their French subjects, under the very guns of Boulogne, because we think fit, by a law to which they are no parties, to declare those ships to be British ships?

Again, by our law (Act of 1854, sections 267 to 270), the Court of Admiralty here has jurisdiction to try by the law of England all offenders for all offences committed in any British ship in any part of the world. A French subject, on board a French ship, in a French port, does an act which is no offence by the law of France, but is an offence by the law of England. Suppose that ship has by our law been declared to be an English ship. If the Lord Chancellor be right, and this French subject be afterwards found in England, he may be seized and tried, and convicted and punished, by the Court of Admiralty here, for an act which by the law of his own country is no offence at all.

So he may have committed a crime on board this French ship, made English, which by the law of France is punishable with imprisonment only, but by our law with death. If the Lord Chancellor be right, this French subject, for an offence for which in France he could only have been imprisoned, may, if he can be caught in England, be hanged.

Again: France is at war with Russia; England at peace with both. A Russian fleet of merchantmen is

met by a French squadron. Russia has prevailed upon England to pass an Act of Parliament declaring all Russian merchant-ships to be British merchant-ships, or, to use the language of the treaty with China, "English merchants-hips." The French squadron attacks and seizes the Russian vessels. England protests that her British ships have been attacked by France, and the British flag insulted and hauled down, and the crews conveyed away and imprisoned. Is this a *casus belli*?

My Lord, it is impossible not to see that, if this strange and before unheard-of principle be once adopted by England towards some independent and powerful state, capable of maintaining its own rights, and of making its voice heard among the other nations of the world, we shall be charged with having waged an unjust war, upon a false pretence, and condemned by the common voice of all mankind. The plain truth is, that we have attacked the defenceless Chinese without any just cause. If we had really been aggrieved, our measures were unduly severe and cruel. But unless we have power to bind China by our laws (and if we have, we may equally bind every nation upon the face of the earth), we are altogether in the wrong; and we have without provocation inflicted pain and misery and death upon thousands, and tens of thousands, of unoffending men, women, and children, to say nothing of the many lives of our own countrymen which have been sacrificed.

If we professed to treat the Chinese as an incorrigible, sanguinary, and barbarous race, with whom it would be impossible to deal or to act upon the principles of international honour and good faith, and

who have placed themselves without the pale of civilised nations, we might perhaps justify any aggression upon some ground of self-defence or of necessity. But this we cannot plead. For we have recognised these alleged barbarians as a state and as an empire. Her Majesty the Queen has entered into a treaty which at this moment is in force with the Emperor of China. We cannot then, without ignominy and dishonour, advance, in our dealings with them, a different principle of international law from that which we should insist upon against France or Russia or the United States of America.

If, indeed, we had gone so far in the course of wrong against any one of these great and powerful empires, and we were then to recede, our acknowledgment of error might be imputed to timidity; but with a feeble and defenceless people like those whom we have assailed, we can afford to be moderate and forbearing, and shall seem to be generous when we are but just. Our real misfortune throughout all this unhappy business is, that from the first we were in the wrong. The lorcha was not an "English merchant-ship" within the meaning of the treaty. The Chinese had a right to board their own Chinese ship in their own harbour. We had no right to complain of them for doing so. We did complain; and because they insisted on a right which was their own, and refused to admit a wrong which they had not done, we made war upon them, burnt their houses, bombarded or shelled their city, and put to death in multitudes its helpless inhabitants.

A majority of Lords and of Bishops may vote this right, but they cannot make it so. We cannot

efface the truth from the page of history. It will stand recorded against us in all times to come. The reflecting, the wise, and the good throughout the world will condemn us; the deep red stain of our guilt is indelible. But let us hope that it is not yet too late at least to confess that we have erred; and that the Ministers of the Crown will be led by the vote of the House of Commons to atone for our error. We may then be consoled by the recollection, hallowed by the glorious eloquence of Gladstone, that "the House of Commons, which is the first, the most ancient, and the noblest temple of freedom in the world, is also the temple of that everlasting justice, without which freedom itself would be only a name, or only a curse to mankind; and that that House has sent forth its mandate from its walls as a message of mercy and peace, but also as a message of prudence and true wisdom, to the furthest corner of the earth."

I remain, my dear Lord,

Ever most faithfully yours,

FITZROY KELLY.

Piccadilly, March 6, 1857.