

# THE BLACK WARRIOR AFFAIR

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## THE BLACK WARRIOR AFFAIR

THE affair of the *Black Warrior* was symptomatic of the political conditions of its time in the United States. It may perhaps be treated as a type of the many disputes which arose during the last century over the peculiarly Spanish methods of applying the navigation laws of Cuba to our shipping. It brings us into contact with the Spanish administration of Cuba in the days of an international crisis. But the various accounts of the affair that have already been written are based in all the essential points upon such documents and diplomatic and private papers as have been given to the government printers for publication by the Department of State.<sup>1</sup> As this material has for the most part consisted of reports and correspondence of American origin, the evidence deduced from it in arriving at a judgment on the real merits of the case presented by the parties involved is unsatisfactory, and the data furnished by it have in many particulars remained incomplete.

An examination of the letter-files of the captain-general of Cuba preserved in the Archivo Nacional at Havana has brought to light many new papers which shed new light upon this historical incident. The Spanish documents bearing on the subject are supplemented by the correspondence, official and private, of Americans residing in Havana who played important rôles in the affair. We now have at hand probably the most important official notes that passed between Madrid, Havana, and Washington, confidential correspondence (sometimes carried on in the Spanish government's cipher code), which constitutes a very interesting commentary not only on the internal politics of the country, but on the main part of the foreign policy of the Pierce administration and the attitude of the European powers toward the ambitions of the latter.

This present account does not purport to be a complete story of the *Black Warrior* Affair; it merely attempts to avail itself of certain new matter in order to fit some missing historical passages into an existing fragmentary account. With these prefatory remarks, we pass on to a review and consideration of the important events which occurred at Havana during the months of February,

<sup>1</sup> Serial 724, 33 Cong., 1 Sess., Executive Documents, vol. 11, 1853-1854, no. 86, pp. 306-318; Serial 790, 33 Cong., 2 Sess., Ex. Docs., vol. 10, 1854-1855, no. 93.

March, and April of 1854 when the situation known as the *Black Warrior* Affair was developed.

## I.

The American steamer *Black Warrior*, one of the largest vessels engaged in the Atlantic coast transportation trade at the time, had for many months previous to February, 1854, been calling at Havana on her way to Mobile and New York City without particular incident. Though more than thirty trips between New York and Mobile via Havana had been made by the steamer, shipments not billed to Cuba had never been entered in the manifest of the cargo, if we are to accept as worthy of full credence the statement of Tyng and Company, consignees of the vessel. The port regulations of Havana, however, were explicit on this point: all cargo, whatever might be its point of destination, must under the law be declared in the ship's manifest and pay into the royal treasury a sum fixed by law.

On the morning of February 28, 1854, the *Black Warrior*, with upwards of nine hundred bales of cotton for New York and fourteen passengers, passed Morro Castle and anchored in the bay beyond. The vessel was late in arriving. She had been expected on the twenty-fifth and had been "cleared" for the day following. The company's agents were in the habit of applying for clearance papers before the arrival of the steamer in order to have done with a formality which might develop into a source of delay if postponed. This very obvious irregularity was sanctioned by the Spanish officials.

The *visita de fondeo* (visit of inspection) was made in the usual manner by the revenue inspectors, who at the time placed in the hands of Captain Bullock an English copy of the regulations of the port.<sup>1</sup> Revenue Inspector de Santiago, who was accompanied by the government interpreter, happened to glance into the open hatches of the vessel and discovered that a great quantity of cotton was being carried, although the ship's manifest made declaration of nothing but "ship's stores".

In this "heyday of filibusters" the greatest vigilance was enjoined on all Spanish officials: Pezuela, the new governor, who had been sent to Cuba because of his well-known energetic character, had undoubtedly been sufficiently warned by the feverish activities of certain adventurers in the States to take every precaution to guard the coasts and ports committed to his charge. De Santiago told

<sup>1</sup> Sworn statement of Jaime de Santiago, June 17, 1854.

Captain Bullock that he had twelve hours in which to correct his papers, but that in the meantime the discovery that had been made would have to be reported to the collector of the customs. The captain retorted that, as the goods were on their way to New York, Havana had no interest in them; whereupon he was informed "that the bales that he was carrying should be declared *in transitu*, according to the customs regulations, which he must be well acquainted with inasmuch as he came frequently to the port."<sup>1</sup> It was bruited about that the captain had aboard a cargo of contraband.<sup>2</sup>

At twelve o'clock on this same day, Tyng, the ship's agent, sent his clerk to the customs office with orders to secure a pass for Morro Castle so that the steamer might resume its northern journey. He was then told that the vessel was under suspicion. Roca, the collector, states that he sent a message immediately after the visit of de Santiago to the ship apprising Tyng and Company of the turn affairs had taken. A second visit of inspection was commanded in order to ascertain the correctness of the report of de Santiago; and the pass requested was refused pending the result of the re-examination of the hold of the steamer. Of course an enormous unmanifested cargo was found on board the *Black Warrior*. When the second official visit was paid to the vessel, Roca, after consulting with his superior officer, the *intendente*, and upon Tyng's refusing to go on the captain's bond, ordered the immediate seizure of the cargo and the arrest of the captain. Roca was careful to stipulate "that this [discharge of the ship's cargo] should proceed with the despatch that the case required in order that the said boat might suffer no delay". All this occurred before four o'clock in the afternoon of the day of the arrival of the steamer.<sup>3</sup>

Tyng now hurried to the consulate of the United States, which was at the time in charge of Acting Consul William H. Robertson. This official showed an activity all through the affair which the Spaniards characterized in very severe terms and which won for him the cordial dislike of the authorities of the country. The governor looked upon him as the type of the objectionable American

<sup>1</sup> *Ibid.*

<sup>2</sup> Justo Zaragoza, *Las Insurrecciones en Cuba: Apuntes para la Historia Política de esta Isla en el presente Siglo* (Madrid, 2 vols., 1872-1873), I. 660; Miguel Estorch, *Apuntes para la Historia sobre la Administración del Marqués de la Pezuela en la Isla de Cuba, desde 3 de diciembre de 1853 hasta 21 de setiembre de 1854* (Madrid, 1856), p. 46.

<sup>3</sup> Roca to the General Administrator of the Royal Customs of Havana (*i. e.*, the Marqués de la Pezuela himself), signed at four o'clock in the afternoon, February 28, 1854.

and as the fomentor of all the troubles that so complicated the affair of the *Black Warrior*.

It was decided at the consulate that the consul and Captain Bullock should proceed to the palace for the purpose of explaining to the governor-general that if an error had been committed it was due to the ignorance of the captain of the vessel, who had no knowledge of the port regulations, and that there had been no attempt to defraud the royal exchequer of a portion of its revenues. In the meantime Tyng was to call at the custom-house and lay his case before the collector of customs. Tyng alleges that the collector refused "offhand" (*extemporáneo*) to permit him to correct the manifest, declaring that the right of correction ceased at the moment of the presentation of the paper. Bullock says he learned, to his surprise, that this right had been lost when the clearance papers had been issued, that is, two days before the steamer reached Havana.

To the assertion of the Americans that the captain had followed all the formalities that had been observed in all the many previous trips of the vessel to Havana, Estorch, the historian of Pezuela's administration, interposes the rejoinder that there is record of at least one case where the captain of the *Black Warrior* had presented the proper legal manifest and where duties on merchandise in transit aboard the vessel had been collected. The very nice point that a practice long continued could crystallize into a custom which might acquire the real force of law and be entitled to all respect as such, and that the sudden enforcement of an obsolete law in opposition to custom might seriously demoralize commerce and work damage for which an indemnity could be exacted, was carefully passed over by the Spanish authorities. This question was a matter for the equitable jurisdiction of Her Majesty. It was fully debated in the *Córtes* a year later. From the Spanish standpoint, it was quite sufficient to interpose at this point that the governor of Cuba was sent to his high post for the purpose of enforcing the law. As to previous arrangements and practices, Roca,<sup>1</sup> who had just been appointed collector of customs of the port of Havana, could hardly have been expected to take cognizance of irregular agreements made before his appointment; it was his duty to compel the shipping of the port to conform to the instructions which were placed in his hands at the time of the assumption of his new charge.

It is worthy of note that none of the Spanish documents at hand, bearing dates showing that they were written within two or three

<sup>1</sup> Estorch, *Apuntes*, p. 70.

weeks after the detention of the *Black Warrior*, contains anything regarding the twelve-hour rule which soon came forward as the point about which the most heated discussion raged. Did the Havana authorities deny to the American citizens on this occasion the legal right they possessed of modifying or correcting the ship's manifest as they pleased within the period of twelve hours after the arrival of the vessel? This point is an all-important one. On June 17 Roca, in obedience to orders from the captain-general (who acted on a suggestion made by the Spanish legation at Washington), subscribed to a sworn statement which gave in his words what transpired during the visit of Tyng to him on the afternoon of February 28. This affidavit of Roca's will repay careful examination; for Marcy was very insistent on the point that the whole success of the Spanish defense depended on whether they could show that the cargo of the *Black Warrior* was not embargoed before seven o'clock p. m. of the twenty-eighth, or twelve hours after the boat had dropped anchor near the coal-wharves of Havana. The Roca-Tyng conference took place between the hours of three and four. Roca states that he directed Tyng's attention

to the fact that he might, if he pleased, with the view of obviating difficulties and guarding against disagreeable possibilities, make an addition to or correction of the manifest, declaring as *in transitu* the merchandise which was on board said vessel; that the instructions gave the captain (or, in case of his failure to act, the consignee of the boat) this privilege in the fifth article; that the period was twelve working [*utiles*] hours; and that he had yet time, as the period did not expire until six o'clock that evening.

Roca states that Tyng had nothing but stubborn remonstrances to offer at this point. The affidavit continues:

The said Tyng replied as follows to this: that "he would not submit to ridiculous formalities, that the cotton and other cargo on board the steamer *Black Warrior* was on its way to another point, and that, as far as Havana was concerned, the boat rode in ballast, as its manifest said"; and, taking out his watch and looking at the hour, he added, "what I do, is to protest before you that this was said at 3:30 in the afternoon"—to which he that subscribes this replied, that he [Tyng] ought not to protest regarding what the "Instruction" prescribed in the case and that he [Tyng] might protest against it before his [Roca's] superior officers, if he believed that he [Roca] was failing to perform his duty.

According to this statement of Roca, the afternoon's representations of Tyng degenerated at this crucial moment into angry protests against "ridiculous formalities" of the law instead of taking the form of an application for permission to correct the manifest that had been presented. The collector on oath further declares

that it was not until the following day that the consignee was ready to present the formal petition which was required. A few days later, Tyng had a conference with the governor-general, who reports it in his despatches to Washington and Madrid in these words:<sup>1</sup>

. . . the consignee called upon me, openly confessing their [Captain Bullock's and Tyng's] fault, attributing it to their ignorance, and requesting of me as an act of clemency that no higher duties be exacted than those paid by every boat having cargo manifested as *in transitu*; but I did not consider it proper to accede to this request out of respect for the law and the national dignity and for the additional reason that, as judicial proceedings had been instituted, it was not in my power to take the step suggested, and furthermore and chiefly because, bearing in mind the circumstances that a sheet of [special] instructions together with a [complete] copy (in English) of the same had been placed in the hands of the captain, a plea of ignorance of customs and language could not be entertained.

Roca's statement was made some four and one-half months after February 28, and much had occurred during that interval to stir the Spanish administration to a realization of the gravity of the international situation. Bearing in mind the advice that (if we are to believe the affidavit of June 17) was given to Tyng by Roca, the following extract quoted from a letter<sup>2</sup> written by the same official a few minutes after the visit of Tyng, and in reply to a note addressed to him by the captain-general, is interesting: "Therefore, I have given orders to the 'Comandante de Carabineros' to begin the unloading of the effects that have been confiscated, and to store them in the warehouses of Casa Blanca, charging him especially and repeatedly to use all moderation in everything." The date of this order is not doubtful: "This is all that I am able to say to Your Excellency in reply to your official note of to-day which I just at this moment received, which is four o'clock in the afternoon. . . . Havana, February 28, 1854. Your Excellency, Joaqn. Roca." If Tyng still had several hours at his disposal during which he could bring the ship's papers into conformity with the law (as the above affidavit would indicate), the immediate seizure of the property by the collector was absolutely without any moral or legal justification, an outrage committed against the property of American citizens, aggravated by the *mala fides* of the collector of the port who issued the order of detention and confiscation.

Pezuela<sup>3</sup> advises Cueto, the Spanish minister at Washington, on the twentieth of the following June that the means indicated by

<sup>1</sup> Pezuela to Calderon and Magallon, March 7, 1854.

<sup>2</sup> Roca to Pezuela, February 28, 1854.

<sup>3</sup> Pezuela to Cueto, June 20, 1854 (rough draft).

Roca as an escape from his "precarious position" was really (as he puts it) "evasive"; for Captain Bullock could not properly claim the legal privilege of modifying the manifest presented. The law in question, he goes on to say, applied only to the person "who had presented said manifest of cargo", permitting this individual to correct a mistake that had inadvertently crept into the paper, but not giving such permission to a person who, like Captain Bullock, did not present any manifest of cargo at all, and "committed a deliberate error for the purpose of defrauding the royal revenues by making a declaration *in ballast* when such was not the fact." This argument comes forward rather tardily, but Pezuela evidently cherished the hope that Roca's suggestion viewed in this light might gain a superior force, evidencing the eagerness of the Spanish officials to render every aid to the American merchants in finding a way through the labyrinth of Spanish law to a method of escaping the heavy penalty that was impending.

The Washington despatches dated May 7 and June 7 fix the crux of the difficulty in this fashion:<sup>1</sup>

The successful issue of the negotiation regarding the affair of the *Black Warrior*, torpified at present by this circumstance [the difficulty of reconciling the conflicting statements of the officials of the two nations in Havana], depends solely for us on the possibility of demonstrating the palpable and complete inexactitude of the assertion<sup>2</sup> of Mr. Robertson.

Cueto was not slow in detecting the weak point in the governor's defense. With the record of the period before us, we can appreciate the force of added pressure which despatches of the above nature from Washington must have had on Pezuela, who through Roca had been fully advised on February 28 of the steps that had been taken that day in the matter of the seizure of the cotton aboard the American steamer. Every bit of evidence goes to establish the belief that Her Catholic Majesty's representative in the "ever most faithful City of Havana" was not at that time unwilling to avail himself of the administrative privilege of prevarication.

With the above facts clearly established, the suspicion gains strength that Havana was trying to make our consul a scapegoat for Spanish aims. It was felt in Spanish official circles that something must be done to correct the impression that Robertson's official reports were giving. Pezuela, pressed hard for facts, maintained that "our government should protest immediately against the asser-

<sup>1</sup> Cueto to Pezuela, May 7, 1854.

<sup>2</sup> That is, that the vessel and cargo had been seized by the authorities of Havana before the much-discussed legal period of twelve hours had run.

tions that the consul Robertson has made or may in the future make, as I consider him to be the prime cause of the strained relations at present existing between the two governments".<sup>1</sup> Occasionally the personal hostility of the two officials finds expression in the notes exchanged by the Consulate and the Palace. In the hurry of the moment Robertson had neglected to take a copy of the first letter<sup>2</sup> to Pezuela relating to the detention of the *Black Warrior*, and so respectfully requested that a copy of the original in the hands of the governor might be made for the files of the consulate. The note from the secretary of the governor accompanying the copy of the letter indicated remarked insinuatingly that the Marqués de la Pezuela was a gentleman and for his part had nothing to conceal. He probably adverted to Robertson's failure to transmit a copy of the letter of February 28 to the Department at Washington. Then came the articles in the *Diario de la Marina*, the official paper, savagely attacking the consul and the head of the government he represented. Robertson in both cases<sup>3</sup> criticized the translations that had been made of a consular despatch and the President's message—translations that were so bad as to be vicious—qualifying the philippic directed against him as actuated by malice and as showing a clear intent to pervert the facts. He even went to the length of demanding that the objectionable passages in the articles he named be corrected in a manner honorable to himself. The important part of the governor's reply in the formal third person follows:<sup>4</sup>

That he [Pezuela] has considered as official all communications that Your Honor has addressed to him, not having had at any time motive to act otherwise; that henceforth you may abstain from directing to His Excellency complaints foreign to the exclusively commercial character of the exequatur (which Your Honor may please to reread at this point) granted to Your Honor by the Queen, My Lady; that there is no representation here recognized by the States of the Union as having such privileges, and Your Honor may turn with your grievances to your government as this government may turn to its own or to our representative at Washington, when it may be necessary.

The governor promised, however, to have certain of the corrections desired made. Pezuela in his secret despatches accuses Robertson of improperly and clandestinely interfering in the affairs of the country. He declares that Robertson permitted the captain of the *Fulton* to vaunt in his house the mad purpose "of taking the *Black*

<sup>1</sup> Pezuela to Cucto, June 20, 1854.

<sup>2</sup> A letter that was a purely formal protest against the proceedings of the Spaniards as to the *Black Warrior*.

<sup>3</sup> Robertson to Pezuela (2), April 1, 1854.

<sup>4</sup> Secretary of Government to Robertson, April 2, 1854.

*Warrior* out of the port by force", and that the consul "made exaggerated and erroneous reports to Washington which prompted the President's message out of which arose all the present international difficulties".<sup>1</sup>

The very fact that inadequate powers were granted our consular representatives in Havana was the direct cause of endless friction between the consulate and the government of the island. It was inevitable that our consuls should quickly fall into bad repute with the Spanish authorities of Cuba and be arraigned as officious intermeddlers, if they were to be of any service to the Americans who were constantly falling victims to incomprehensible formalities or to the principle of *dolce far niente* of the island administration. An increase in the powers of the consul which would give him a semi-diplomatic character would have harmonized well with the viceregal prerogatives of a governor of the time of Pezuela.<sup>2</sup>

Coming back to the original facts of the case, nothing could prevent the embargo from being laid on the vessel. On March 2 Charles Tyng and Company petitioned the captain-general, acknowledging that "they *had erred* through pure ignorance, but without the slightest intention of causing loss to the Royal Treasury or of creating difficulties".<sup>3</sup> A petition drawn up on the previous day had stated that, during the course of many trips from Mobile to New York, the agents had always omitted to make declaration of cargo in transit as it had been taken for granted that this was the proper thing to do. This objectionable phraseology was not repeated in the formal petition of March 2, probably in obedience to a suggestion from high quarters. On March 7 the *Diario de la Marina* published a decree which had gone into effect on the twenty-third of the previous month. This decree declared that a manifest once modified in any way was final and could not be allowed in any particular; it is extremely doubtful whether this order, which had been published weeks after the confiscation complained of, was law on February 28. On March 16 the vessel and cargo were released and a fine of \$6,000 imposed on the agents, Tyng and Company, in lieu of all other punishment.<sup>5</sup> The captain-general agreed to permit a petition to be transmitted through him to the Queen. This petition was favorably received by the home government, Her Catholic Majesty deigning to remit the fine of 6,000 duros and to

<sup>1</sup> Pezuela to Cueto, June 20, 1854.

<sup>2</sup> Zaragoza, *Las Insurrecciones*, I. 654.

<sup>3</sup> Estorch, *Apuntes*, pp. 174-176.

<sup>4</sup> Serial 790, 33 Cong., 2 Sess., Ex. Doc. 93, p. 46.

<sup>5</sup> Pezuela to Magallon, March 21, 1854; Estorch, *Apuntes*, p. 176.

grant, with generosity becoming royalty, customs privileges similar to those enjoyed by the ships of the English Royal Mail Line.

In the course of the next twelve months America heard little of the *Black Warrior* affair. During the vernal months of the following year the matter of indemnity to the owners of the *Black Warrior* had reached the stage of discussion in the stormy sessions of the Córtes. The American claimants received ministerial support in the persons of Luzuriaga and Zabala. It was freely acknowledged that the practice observed by Tyng of not declaring goods billed to New York or Mobile had "converted itself into a species of custom, constituting almost a law for the master of the steamer who felt sure that, if he declared the steamer to be in ballast, no inspection would be made, and this was done with the advice (*anuncio*) and consent of the authorities".<sup>1</sup> The official gazette of Madrid<sup>2</sup> observed that the authorities could not accept the refusal of Captain Bullock to amend the ship's manifest at two or three o'clock as a formal and effective renunciation of a right which the law gave to third parties for the space of twelve hours after the arrival of the boat.

A document discovered among the papers submitted by Pezuela<sup>3</sup> showed that twelve hours had not elapsed from the time of the arrival of the steamer to the moment of the imposition of the embargo. In the fact that the *Black Warrior* carried mail the Spanish ministers found justification for the novel method pursued by the house of Tyng for the purpose of obtaining clearance papers for a vessel that had not yet reached port. In accordance with the recommendations of the Cabinet, the owners of the *Black Warrior* were granted an indemnity of \$53,000, thus putting a last touch to the complete triumph of the American case and severely censuring the administration of the Marqués de la Pezuela, who had been recalled in the autumn of the previous year.

## II.

The difficulties of communication with Cuba and the inevitable delays of distance were eagerly seized upon by Madrid as excuses for what might be properly called administrative procrastination, whenever it was feared that an affair might take a turn prejudicial

<sup>1</sup> Diario de las Sesiones, P. 8944 (1855); *ibid.*, March 29, 1855.

<sup>2</sup> *Gaceta de Madrid*, December 6, 1854.

<sup>3</sup> *Ibid.*

<sup>4</sup> On May 3, 1855, the Minister of State said in the Córtes: "It gives me pleasure to inform the Córtes that the *Black Warrior* affair has been concluded and the feeling of common accord re-established between the two governments."

to the royal exchequer and disagreeable to Her Catholic Majesty. The opportunities presented by the nature of the respective positions on the map of colony and mother-country for delaying practically at will the settlement of claims of Cuban origin against the Spanish government were almost always too tempting to be neglected by Spanish statesmen. A protest handed by our consul in Havana to the captain-general was referred to Washington, which informed Madrid. Madrid must await a direct report from Havana before it could consent to take up a discussion of the case. Regarding the particular case we have in hand, however, Spanish diplomacy acted with unwonted despatch and incisiveness. On the seventh day of March, 1854, when for the first time it appeared certain that the *Black Warrior* affair would come into the international arena, the captain-general transmitted official accounts of the seizure of the vessel and cargo to Spain and to the Spanish *chargé* at Washington, who almost immediately on receipt of the Havana correspondence reported to his government on the general political situation in the United States.

No one has sought to palliate the extraordinary conduct of our representative at the court of Madrid during the course of this affair. Soulé was ambitiously exceeding his instructions and busily antagonizing colleagues and government at Spain's capital. In his eagerness to force a war and so wrest from Spain the possession of the Pearl of the Antilles, he was advancing claims and preferring charges of such stupendous magnitude that no government could in justice to itself think of entering into a discussion of the matter without being in possession of unusually full official information. Calderon de la Barca's appreciation of this situation is embodied in the instructions transmitted to Magallon on April 13: the Spanish Secretary of State describes the expectant attitude of the Spanish government; and it may be said, by way of introduction to the passage we quote, that Pezuela's first despatch of March 7 was to be continued by another prepared in time to catch the next monthly steamer, so that a complete report of the proceedings in Havana could have reached the Spanish Department of State only late in the month of April:<sup>1</sup>

This government has not refused, as Your Excellency will see, nor does it refuse in this nor in any other case, to fulfil the obligations that are imposed by international law and by justice. But to accede without further investigation and with unseemly haste to the extraordinary demands of Mr. Soulé, presented in these solemn days<sup>2</sup> in a manner so

<sup>1</sup> Calderon to Pezuela, April 13, 1854.

<sup>2</sup> The Lenten festival in Catholic Spain.

unusual in transactions of this kind between friendly nations, would be derogatory to the dignity of an independent government, would be an act of arbitrariness against authorities in whom Her Majesty reposes her confidence. It is the duty of the government to hear and to take under careful consideration what the latter may adduce in their defense, and not to pass judgment hurriedly upon the presentation of evidence by the interested and irritated party alone.

The most elementary notions of justice could not be content with less. Authentic and complete data from Havana were indispensable to the formation of a correct and equitable judgment in the case.

During the time of his residence as Spanish minister in Washington Calderon, the Spanish Secretary of State, had had ample opportunity to gain a thorough acquaintance with the leading traits of American character and to obtain a more than superficial knowledge of the problems with which the leading parties were grappling. He at once realized the peculiar significance of the present affair, which bade fair to bring on all kinds of complications. All the instructions which he issued to his subordinates are couched in terms that are both firm and conservative. He saw clearly that certain factions in the States would welcome a war with Spain, and that the most exquisite tact would be required on the part of the representatives of his country to avoid a terrible international collision and gain a delay during which the excited passions of the hotheads in the Union might have time to cool. He was ready to act on a suggestion that the whole matter be submitted for arbitration to some friendly power, and was first to point to this way out of the difficulty.

Two despatches in cipher soon arrived from Washington bearing startling news of the sensation created throughout the length and breadth of the Union by the detention of the *Black Warrior*. The tone of the press and the attitude of the leading members of the Cabinet were unmistakably bellicose. The possibilities of the situation were discussed by the Spanish *chargé d'affaires* at Washington, who expressed the opinion "that internal questions have so divided the Democratic party that it will not be strange if this government utilizes this or any other excuse to create a national question, with the purpose of uniting the party upon it".<sup>1</sup>

Was that volcano of American politics now to break out in an eruption that would destroy the last vestige of Spanish sovereignty in the West Indies? This was a question which editors were inclined to answer affirmatively and diplomats to discuss with fore-

<sup>1</sup> Magallon to Pezuela (inclosing Magallon to Spanish Secretary of State. March 20, 1854), March 22, 1854.

boding. The foreign representatives at Washington were fully alive to the gravity of the situation. England and France were quite sure to be behind Spain with their advice and encouragement, and the other powers followed their lead.

Secretary Marcy and President Pierce were known to be greatly incensed over the affair, and it was apparent to every one at the nation's capital that strong pressure by powerful influences was being brought to bear on the President in the effort to raise the incident to the dignity of a *casus belli*. The general situation has an additional interest if told in the words of the Spanish *chargé*; the essential portions of the confidential cipher despatches are here inserted in translation:<sup>1</sup>

As soon as the news of the detention of said steamer by the authorities of Cuba reached this point by telegraph from Charleston, the press broke out in diatribes against the government of Cuba and that of Her Majesty, each of the editors proposing a mode of avenging the so-called outrage; only the chivalric and independent "Intelligencer" and one other sheet counselled moderation and an impartial investigation of the matter before passing judgment upon it. A representative in the House proposed the suspension of the laws of neutrality as regards Spain; this proposition was rejected. On the following day another moved that the President be requested to transmit to the House the official correspondence relating to the affair. This was approved, and in conformity therewith the President yesterday transmitted to the House the inclosed message, regarding which I believe I may be excused from making any commentary, as up to this time I have been able to study only the portion furnished by the American acting-consul in Havana, whose report is for the most part founded upon suppositions. The agents [Tyng and Company], however, state that they have been guided in everything by the counsel of this consular agent. I beg to advise Your Excellency that illusive hopes should not be built on this particular. From the President down, all are disposed to take advantage of any opportunity to get possession of Cuba, whether it be by attacking the island directly or by lending aid to the revolutionaries. The situation in the Orient they believe to be as favorable to this as they have for some time desired; and they will have it understood that the preoccupation of France and England in those regions will prevent these nations from lending aid to us and that they [the Americans] can work more freely.

If I had no other reasons in support of this statement of mine than the above, those which I now communicate to Your Excellency would suffice. On the occasion of the visit of the minister of England to the Department of State, when the minister asked Mr. Marcy whether in the case of the cessation of hostilities with Russia, and in case the vessels of H. B. M. should seize any American privateer [or as the Spanish has it, *corsair*], the law of the United States would be applied to the latter, Mr. Marcy replied in the affirmative; and added, as in jest, that England and France would in this respect be so satisfied with this government

<sup>1</sup> Magallon to Pezuela, partly in cipher (transmitting Magallon to First Secretary of State, March 16, 1854), March 20, 1854.

that he hoped that said powers would put no obstacles in the way of the annexation of the island. When the astute General Almonte, on the other hand, tried to convince Mr. Marcy that the modification of the article of the treaty just negotiated with Mexico, in which the United States engaged itself to employ its army and marine in the destruction of whatever filibustering expedition might take up arms against that republic, deprived Mexico of one of the most important bases of said treaty, he [Mr. Marcy] responded to him in these words: the concession would mean nothing to Your Excellency but would tie our hands in the question of Cuba; this in spite of the assurances given in the message of the President at the opening of the last Congress! The minister of Mexico assured me yesterday that a person who was present when the President received the first news of the embargo placed on the Black Warrior told him that he [the President], rubbing his palms together, exclaimed: "Good, good. Here is a fine bit of political capital!"

A note of March 20 continues the above:<sup>1</sup>

The minister of France told me that he had had a long conference with the Minister of State, in which he had tried to convince the latter that the case of the Black Warrior was a purely commercial question and not a political question as they are trying to make it, reminding him that not long since the collector of customs of California, in contravention of the laws of the United States, had detained and sold at public auction several English and from thirteen to seventeen French vessels, without this having altered the relations of France and England with this country. The Minister of State persisted in asserting that the alleged outrage had been committed with the express purpose of offending this republic and its government, and told the French minister that at any rate his instructions had already been issued and the message of the President transmitted to the House. The Count de Sartiges said to him then that he was certain that his government as well as that of England could not look with indifference upon any attack on the integrity of Cuba, and that they would maintain the principles advanced in their project of the Tripartite Treaty. As it was rumored with some appearance of truth that this Congress of Representatives [*sic*] would vote the suspension with respect to Spain of the laws of neutrality of 1818,<sup>2</sup> the minister resident of Bremen went to see Mr. Mann, Sub-secretary of State, and in confidence protested against that proposed measure, alleging that not only our commerce but the commerce of all other nations, including his own, would suffer thereby. To this Mr. Mann replied that those who broke the law in its application to other countries would be punished, but that he believed that the government really wished to obtain this authorization from Congress. Then the minister resident pointed out the impossibility of punishing those acts of piracy, owing to the fact that it was impossible to bring forward witnesses against the offenders, as the vessels seized were sunk after being robbed. At the conclusion of his conference with Mr. Mann he came to inform me regarding it. Finally the present *chargé d'affaires* of Russia, a friend and old comrade of mine, told me that he had found Mr. Marcy much

<sup>1</sup> Magallon to Pezuela (transmitting Magallon to the First Secretary of State of Spain, March 20, 1854), March 22, 1854.

<sup>2</sup> See *United States Statutes at Large*, III. 447-450.

incensed, and that Marcy assured him that if he had had the available vessels he would have sent them to Havana; but that they were going to summon the squadron which they had in Japan, for this purpose as well as in view of what might possibly occur. The message of the President is still under consideration in the Committee of Foreign Affairs of the House; but from a short speech that its chairman, Mr. Bayley, made in reply to a question, the report of the committee will not in the slightest degree depart from the tone of virulence of said message.

The probable alignment of the powers, in the event that America dealt the stroke that was to cut the Gordian Knot and bring on the war, was of the greatest interest. Direct word had reached Madrid that Spain's old friends would stand by her in this crisis to the end. "From communications that we have received from London and Paris", wrote Calderon,<sup>1</sup> "we learn with satisfaction that the Cabinets of France and England approve our course and are of the opinion that justice is on our side." On the day following the despatch of this, Her Majesty's representatives in the New World were informed that the hint had been dropped at the courts of Paris and London that the Queen of Spain would not look with disfavor upon any proposition that might be made to arbitrate the whole question.

All the news that reached Madrid from Washington, however, was far from being reassuring; the hopes that were felt at first of an early settlement gave place to a feeling of pessimism regarding the outcome. As to an amicable adjustment of the difference at an early date, the Spanish diplomats at Paris and London were informed "that, unfortunately, there are motives not unknown to you which would prevent the government of Her Majesty from placing too many hopes on the certainty of such a termination".<sup>2</sup> Calderon, who, as has been said, had passed a period of diplomatic service in Washington, could not be altogether certain that the clouds that seemed to be hovering over Cuba's coasts were not those of war. He knew that many persons were ready to applaud such sentiments as those which proceeded from the editorial columns of the *Union*, a paper which was looked upon as most certainly voicing the views of the administration. This paper declared that the time had arrived when we must meet Spain in Cuba with "the purse in one hand and the sword in the other".<sup>3</sup> Shortly after the first news from Havana reached the public, the *New York Herald* thus harangued its readers:

<sup>1</sup> Calderon to Pezuela, May 7, 1854.

<sup>2</sup> Same to same, May 8, 1854.

<sup>3</sup> *Washington Daily Union*, June 23, 1854; quoted in letter of Cueto to the Spanish First Secretary of State, June 24, 1854.

If the administration have any heart left, if there be among them one spark of American spirit, let them take up this matter in the tone which befits the gravity of the case, and the chronic character of the Cuban disease. No ambassadors, or diplomatic notes are needed. Let them simply fit out, in a week at farthest, three or four war steamers, and despatch them to Cuba, with peremptory orders to obtain satisfaction for the injury done to the *Black Warrior*. Let Governor Pezuela be allowed twenty-four hours to release the cargo of the steamer, and make full compensation to the owners, and in default, we shall see whether our navy contains but one Ingraham.<sup>1</sup>

That the Spanish authorities of Cuba had had no intention of insulting the American flag was of course carefully emphasized by Cueto.<sup>2</sup> The Spanish premier characterized the affair as an incident which,

exploited by malice and by the spirit of hostility to Spain which is fostered by certain evil-intentioned parties, assumed an importance which it could never have had, had it been investigated in the beginning with cool deliberation, and had an attentive ear not been turned to the impassioned reports of those who sought to pass as the aggrieved parties and to exaggerate the extent of their injuries.

At Madrid, Soulé was beginning to become more moderate in his behavior and showed himself hopefully tractable in a conference with San Luis, the president of the Council of Ministers. The time had arrived, it was thought in Spanish circles, when Cueto might be instructed to lay stress upon the well-known fact of the almost brutal insistence of the American claimants and the generosity and fairness of Her Majesty's government. Cueto was instructed to make a direct appeal<sup>3</sup> to the President's sense of justice and to prevail upon him and Marcy to lay the vexed question forever aside.<sup>4</sup> Though the release of the steamer *Black Warrior*, the remittal of the fine, and the grant of special royal privileges to the owners of the boat put the minister at a loss to imagine any possible *point d'appui* in reason for new claims, it was recognized that the general situation was far from being reassuring. Quitman in the South<sup>5</sup> and Slidell in Congress might be successful in their purposes. What then? All possible contingencies must be carefully considered.

If passion prevails against reason [came the word from the old Castilian], if the repeated assurances of our purpose and sincere desire to preserve peaceful relations with the Republic are vain, Your Excellency will labor for delay and to obtain the acceptance of arbitration, which is the means to which good faith turns and which cannot be

<sup>1</sup> *New York Herald*, March 11, 1854.

<sup>2</sup> Cueto to the Secretary of State, June 24, 1854.

<sup>3</sup> Calderon to Pezuela, May 10, 1854; also Calderon to Cueto, same date.

<sup>4</sup> Calderon to Pezuela, May 7, 1854.

<sup>5</sup> Same to same, May 10, 1854.

refused when it is intended to secure a triumph of justice by discovering the truth. But although Your Excellency is authorized to support this idea, this proposition of arbitration, as a last recourse, it should not be suggested either verbally or in writing by Your Excellency. There is one contingency which, while the government of Her Majesty does not look upon it as probable, yet cannot remain unnoticed. I allude to the case that the abolition of the law of neutrality should be proposed in Congress, or what is substantially the same as the trampling under foot of the most sacred precept of the code of nations. If that country should bring such a scandal forth into the world, Your Excellency will take measures to prevent the passage of such a resolution. If, upon being passed, it is sanctioned by the President, Your Excellency will protest against it, representing that Her Majesty will consider it as a declaration of war which is most abhorred by all Christendom, the war of pirates. Your Excellency will [then] withdraw from Washington with the whole legation and send a full report of everything to the captain-general of Cuba. Your Excellency will act in a similar manner if an expedition of pirates,<sup>1</sup> such as has set out in the past, succeeds in leaving for that island, and if it is followed by another, although it may be a division of the same expedition. Your Excellency will state that war is considered as having been declared, and Your Excellency will advise the captain-general to that effect, in order that he may take the proper measures.<sup>2</sup>

The Spanish minister at Washington was admonished to keep in constant communication with the captain-general throughout this period of crises, and to galvanize into life the torpidity of certain consuls of Spain in the States, bringing them to a full realization of the necessity of reporting frequently to the legation and of keeping constantly on the alert. Further, the consuls in the chief cities of the States were to be kept *au courant* of the course of events in Havana by Pezuela, as is evidenced by the correspondence at hand. Extraordinary powers of removal *ad interim* of those commercial representatives who did not show the requisite official zeal were given the minister in this emergency. But the fact was apparent that the crisis had already passed. In America a reaction had already begun to set in against the undiplomatic and ambitious Soulé. The attention of the American people was directed westward to the great initial manifestations of a hostility which was soon to array one section of the country against the other in civil war.

Cueto wrote his government on June 7 that the Washington Cabinet was trying to extricate itself from the *Black Warrior* entanglement. Apropos of the manoeuvre of Soulé,<sup>3</sup> which consisted in again presenting a mass of accumulated claims of American citi-

<sup>1</sup> Reference is made to filibustering expeditions.

<sup>2</sup> Calderon to Pezuela (Calderon to Cueto, dated the same), May 7, 1854.

<sup>3</sup> Soulé to Calderon. April 20, 1854, Serial 790, 33 Cong., 2 Sess., Ex. Doc. 93, p. 77.

zens and in crowding Spain with demands that the claims be immediately liquidated, the envoy had this to say:<sup>1</sup>

I do not fear it [a discussion of these claims] at the present time, because, as Your Excellency very well knows, these claims have not been disinterred by reason of any value which any one of them may in itself have, but as a method of procuring pabulum for the execrable system of political popularity, which consists in exciting the public opinion in these states against the Spaniards by imaginary grievances. Mr. Soulé, who shows himself such a stubborn promoter of this system, has lost so much of his diplomatic prestige that (I desire to state this in such a manner as will leave no room for doubt) this government will not follow his lead in the matter of the claims referred to; at least, in these moments, when the majority of the American people, disgusted with the extraordinary demonstration accompanying the presentation of groundless claims, and with the incongruous plans of the government, and distrusting the latter not a little, are restraining the ebullition of anger which was produced in the beginning by the "Black Warrior" question.

The internal strife reached such proportions and so engaged the public attention that the Spanish minister was able on the eighth of the next month to report that "all the questions promoted by the hostile policy of this government against us remain as if paralyzed; the press is silenced, and the affair of the 'Black Warrior' almost forgotten".<sup>2</sup>

When Cueto in obedience to instructions from home sought an interview with Marcy and laid before the secretary the case of his government together with the detailed reports from Havana, the whole matter had passed into the hands of Congress; and the Department of State was able only to transmit to that body such information as it received. The conciliatory note of Calderon,<sup>3</sup> which Cueto placed before Marcy and Cushing<sup>4</sup> in the original, made a deep impression upon the minds of the Cabinet members, who requested that they might have a copy of the communication. But the Spanish diplomat excused himself from this on the ground that he would first have to ask permission of his government before he could grant this request; for, as he writes to his superior, in the light of past experience he had reason to fear that the official note might be given out to the press with the "usual self-laudatory comments thereon prepared by the administration". It was quite evident from the attitude of the two secretaries that they would willingly, if they could, close up the whole matter.

<sup>1</sup> Cueto to Calderon, July 4, 1854.

<sup>2</sup> Estorch, *Apuntes*, p. 52.

<sup>3</sup> Calderon to Cueto, May 7, 1854.

<sup>4</sup> When Cushing learned that Tyng in his petition acknowledged that "the Captain had erred", the attorney-general ejaculated impatiently, "Of that stamp are all merchants". *Ibid.*

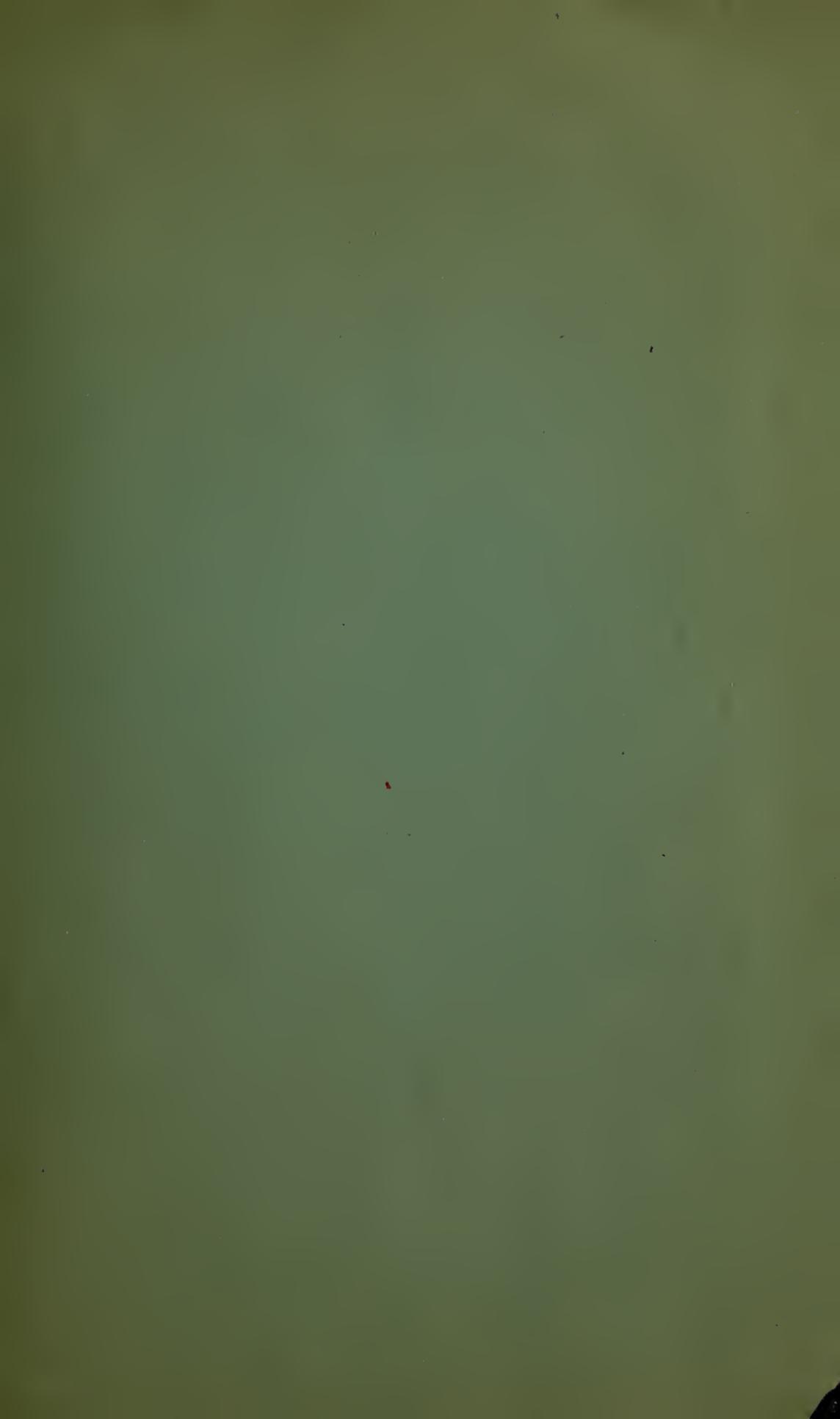
In this interview Marcy carefully sifted the evidence, and advanced the opinion that nothing was clear but the fact of a direct contradiction in the evidence presented by Pezuela and Robertson, respectively, and that there the matter must rest pending the receipt of further advices after a fresh investigation. The question regarding the intent of the Cuban authorities to dishonor our national emblem was hardly touched upon; it had been relegated to the limbo of all abortive international charges.

At length the normal conditions had returned. Spanish diplomacy, aided by its good ally in America, the struggle over the question of the extension of slavery, had won the day against the faction who had favored the incorporation of Cuba into the Southern system at any price. Fifteen days after the conference between Cueto, Marcy, and Cushing, Soulé received word from the Department of State that "The President . . . does not . . . expect you will at present take any further steps in relation to the outrage in the case of the 'Black Warrior.'"<sup>1</sup>

HENRY LORENZO JANES.

<sup>1</sup> Marcy to Soulé, June 22, 1854, Serial 790, 33 Cong., 2 Sess., Ex. Doc. 93, p. 117. In his *Memories of Many Men*, Maunsell B. Field states that after his arrival at Madrid with Marcy's despatch relative to the Ostend Manifesto, during December, 1854, Soulé received instructions to reopen the discussion of the case of the *Black Warrior* with Minister Luzuriaga.





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