

*The Times*, September 29, 1875

“Letters to the Editor”

A GIBRALTAR VIEW OF GIBRALTAR TRADE.  
TO THE EDITOR OF THE TIMES.

Sir, I trust you will oblige the writer of these lines by inserting a few observations on the subject of the trade at Gibraltar, by way of reply to the articles which have recently appeared in several English newspapers. The writers of those articles appear, one and all, to be ignorant of the law on the subject of what they designate as contraband trade, and seem to be under the impression that Her Majesty's Government ought, in some way, to intervene directly to prevent persons resident in Gibraltar from importing into Gibraltar merchandise which is afterwards purchased there by Spaniards and others, and by them imported into Spain, clandestinely, to the detriment and loss of the revenues of the Spanish Crown.

I beg to state most emphatically that there is no law more clearly settled than this -- that no respect is paid to the revenue laws of foreign countries, and, consequently, that the sale in Gibraltar by merchants and traders established there, to foreigners who purchase for the express purpose of smuggling the purchased goods into Spain, is a lawful traffic on the part of the vendors and of the purchasers at Gibraltar. Mr. Justice Story, in his celebrated work on "The Conflict of Laws," says:

"It has long been laid down as settled principle of international law that no nation is bound to protect or regard the revenue laws of another country, and therefore contract made in one country, by subjects or residents, to contravene the revenue laws of another country, is not deemed illegal in the country of its origin. This doctrine seems to be too firmly established in the actual practice of modern nations to be shaken."

In the case of "Pellicot v. Angel," Lord Abinger, then Lord Chief Baron of the Court of Exchequer, in his judgment, said:

"It is perfectly clear that when parties enter into a contract to contravene the laws of their own country such a contract is void, but it is equally clear from a long series of cases that the subject of a foreign country is not bound to pay allegiance or respect to the revenue laws of this country--except that when he comes to be within the act of breaking them here he cannot recover here the fruits of that illegal act; but there is nothing illegal in merely knowing that the goods he sells are to be disposed of in contraband, in contravention of the fiscal laws of another country. It would have been most unfortunate if it were so in this country, where, for many

years, a most extensive trade was carried on in contravention of the fiscal laws of several other nations."

Such is the law of England and America, as enunciated by Mr. Justice Story and the Lord Chief Baron of England, on the subject of the revenue laws of foreign countries. In the case of "The Emperor of Austria v. Day and Kossuth," which was heard on appeal before Lord Chancellor Campbell and the Lords Justices Knight, Bruce, and Turner, and is reported in the Jurist for 1861, at page 639 (and in all the other Law Reports of the day), Lord Campbell, at page 642, in giving his judgment, save, with respect to the revenue laws of a foreign country:

"A more specious objection was rested on the class of cases in which it has been held that we take no notice of revenue laws of foreign countries, so that an injunction would certainly be refused to a foreign Sovereign, who should apply for one, to prevent the smuggling of English manufactures into his dominions, to the grievous loss of his fisc [apply this to the Gibraltar trade]; but, although from the comity of nations, the rule has been to pay, respect to the laws of foreign countries, yet for the general benefit of free trade revenue laws have always been made the exception. The prohibition by the Government of China of the importation of opium, on the alleged ground of public morals, was likewise mentioned, but the English Government refused to interfere with the trade, considering that the Chinese prohibition was rather with a view to revenue or for the protection of the native culture of the poppy."

The statements, and allegations of the writers in the newspapers, are based upon the supposition that it is the duty of one Government to protect the revenue laws of another country by direct intervention. That these writers are labouring under a total misapprehension of the law on the subject is clearly shown by the authorities to which reference has been made. The allegation, therefore, that the merchants and traders of Gibraltar, are smugglers and are acting illegally is false, incorrect, gratuitous, and unfounded. They do what they are justified in doing by the laws of their own and of every other country -- sell merchandise to others who afterwards do or do not, as the case may be, introduce the merchandise clandestinely into foreign countries, Spain or elsewhere. The question as to the legality of the trade at Gibraltar was fully discussed and settled during the government of the late Sir Robert Gardiner. This gentleman, who was a most estimable person, on assuming the government of Gibraltar, verily believed, and acted under the erroneous impression, that the trade of Gibraltar--that is to say, a portion of the trade, the selling merchandise here to Spaniards, who smuggled the cargo afterwards into Spain was illicit in Gibraltar, and he endeavored to prevent it in many ways. His acts were, in fact, such that the inhabitants memorialized the Government on the subject, complained of what they deemed the illegal conduct of Sir Robert Gardiner, sent deputation to England to wait on the Duke of Newcastle, the then Secretary of State for the Colonies, with their memorial, and to represent the case of the Gibraltar merchants and traders to the Duke. The gentlemen who acted as a deputation on this occasion were the late Mr. William Carver and Mr. John Peacock, merchants of Gibraltar, and were introduced personally to his Grace by Mr. John Bright, M.P., who undertook to support the views of the

merchants of Gibraltar. After this interview an answer to the complaints of the merchants of Gibraltar was transmitted to Sir Robert Gardiner officially by the Duke of Newcastle in a dispatch dated the 13th of January, 1854, in which is the following paragraph, to which I call your especial attention:

"Messrs. Carver and Peacock complain of the steps you have taken to suppress contraband trade with Spain, with which, however, they aren't great pains to disconnect the merchants. On their behalf they repudiate the temptation of being concerned in an unlawful traffic, and consider it no business of theirs to give security for the right ups of their commodities by those who purchase from them in open market. This point I am indisposed to contests I know, indeed, that there are many productions of this country consigned to these gentlemen, on which the duties in Spain are so excessive as to be in effect prohibitory, and that unless such goods are to find an entry through the channels of smuggling they are unsaleable at Gibraltar. But there is no law which prohibits their share of the dealings in: these articles, and any question of moral duty which may be involved in it is more for their own consideration than mine."

Such was the communication made by his Grace the Duke of Newcastle, when Secretary of State for the Colonies and the representative of Her Majesty's Government, to the Governor of Gibraltar, to serve as well for his guidance as that of the merchants of Gibraltar. This answer of his Grace is expressly given by him to the fourth paragraph of the memorial of the merchants, in which they allege

"Your memorialists respectfully submit to your Grace that his Excellency has no legitimate authority for imposing restrictions upon the trade of Gibraltar - that by so doing his Excellency is, in fact, assuming a power which is not assumed by Her Majesty or Her Majesty's Government over the commerce of Her Majesty's subjects. Does Her Majesty's Government in England, do the collectors of Customs, or the police, exercise a control over foreign merchants whom they resort to Great Britain for the purpose of purchasing British goods? Is any attempt there made to prevent the export of goods, if there is a suspicion that it is intended to introduce them clandestinely into foreign countries? Your memorialists affirm that there is no such vexatious interference with trade in England or in any other civilized country."

Such is the appeal made to Her Majesty's Government in 1863 by the merchants of Gibraltar on the subject of their trade, and such was the reply of the Duke of Newcastle :-As long as this law is unaltered there is nothing illegal in importing merchandise into Gibraltar and in selling it there, whatever may be its ultimate destination. As Lord Campbell says, "The revenue laws of foreign countries are not respected on the grounds of public policy. Every nation must take its own Measures to enforce its own revenue laws. Smuggling is carried on extensively from the frontiers of Canada into the United States of North America, from the Pyrenees into Spain, from the frontiers of Portugal into Spain, formerly from France into England, from India into China of the deadly

poison opium, and has either Government called on the other to prevent this illicit traffic ? No; each country well understands that one country does not respect the revenue laws of another. Whether that ought to be the law or not is not the question. The law on the subject is settled beyond all doubt in all countries as international laws.

The writers of the articles in the English newspapers, in applying the word "smugglers" to the merchants of Gibraltar, are therefore making allegations in their ignorance of the law. A writer in an article in The Times says, about £1,300,000 of goods, &c., are exported to Gibraltar, and as its population is about 16,000, he assumes that nearly the whole of this merchandise is smuggled into Spain. It will be well to correct this misapprehension. There is a large business at Gibraltar in many branches of trade; about £200,000 worth of coals is sold annually. A very great portion of the manufactured goods is sent here from Great Britain, in transit, to be shipped hence for Spanish ports, where it is received on paying a duty, and these goods are not even landed in Gibraltar; there is a large provision business for the supply of the many hundreds of vessels which put into Gibraltar; there is a large business done in Government contracts, and with Morocco and other ports, and in many other ways. The greater part of the imports are thus disposed of. No doubt a portion of the imports are purchased by foreigners and smuggled into foreign countries. The writers of the articles in the English newspapers seem to think that the smuggling is done by the residents at Gibraltar. It is not so; the purchasers are Spaniards and others, who arrange matters with the authorities in Spain, and, by their connivance, introduce the articles clandestinely into Spain. What is done in the way of smuggling into Spain is done by the Spaniards themselves, and, as there are duties in Spain which amount almost to a prohibition on things which are indispensable to the Spaniards, smuggling will exist as long as the heavy scale of duties prevails. The Spanish Government has no right to complain of Gibraltar. Let it lower its duties and employ an honest and efficient body of revenue officers and pay them liberally, and there would be an end to illicit trade in Spain. There can be no smuggling into Spain if the revenue officials are honest and do their duty. The illicit trade -- that is to say, the importation of goods into Spain without payment of duty from Gibraltar -- has decreased to a very great extent, and might be put to stop altogether if the Spanish Government and its officials were in earnest about the matter. The smugglers are not the merchants and traders at Gibraltar, but the Spaniards themselves. If the commodities indispensably required by the Spaniards cannot be had at Gibraltar, they will be obtained at Oran, or some other port; In fact, a very considerable contraband trade is now carried on at Oran by running goods thence into Spain. It is really rather hard upon the people of Gibraltar to be categorized as smugglers after the communication which was received from the Duke of Newcastle, expressly upon the very question as to whether the trade of Gibraltar was a legal or illegal trade. If the merchants of Gibraltar are smugglers, the merchants of Glasgow, Manchester, and London, who are the agents of the Gibraltar people, are equally so, as they sell their goods destined for Gibraltar with the entire knowledge as the Gibraltar traders, that the goods, or a portion of them, will possibly or probably be smuggled into Spain. There is no lawyer worthy of the name who is not perfectly well aware that the revenue laws of foreign countries are not respected by English Courts of Justice, or by the English Governments or by foreign Governments.

Some observations about the inhabitants of Gibraltar have lately appeared which are false, libelous, gratuitous, and disgraceful. The assertion that counterfeit coin is trade in Gibraltar and circulated in Spain is a gratuitous falsehood. No coin of any kind has ever been manufactured in Gibraltar. Its inhabitants are a quiet, peaceable, well-disposed and conducted community-so much so that there is scarcely any crime at Gibraltar, not more than ten or twelve persons being tried at the Sessions in the course of a year for trivial offences; and there are now not more than 15 convicts in the criminal prison, many of whom are foreigners. These facts of themselves speak volumes for the moral character of the inhabitants of Gibraltar. It may be well you should know that, by the alien laws at Gibraltar, a foreigner cannot enter without the special, permission of the police, and can only remain there for a short time. A foreigner cannot establish at Gibraltar as a trader without the sanction of the Secretary of State, which is seldom granted. The name of any foreigner who enters Gibraltar is transmitted by the police magistrate to the Governor, and by him to the Secretary of State, and the alien population is entirely under the control of the local Government. The allegation that scoundrels from all countries enter and congregate in Gibraltar is false; there is no place in which so many stringent and coercive measures are in force to prevent the immigration of aliens. It is well that all the foregoing facts should be known, in order that those who write about Gibraltar should be acquainted with the actual state of things there. I beg you will oblige me by inserting this communication in your valuable paper, as a reply to the articles which have been lately written about Gibraltar, and remain Sir,

Gibraltar.

Your obedient servant,  
A GIBRALTAR MERCHANT