

## LETTER OF MR. WILLIAM BEACH LAWRENCE.

[The following letter has been received by the Editors of the North American Review, and is printed at the request of the author.]

TO THE EDITORS OF THE NORTH AMERICAN REVIEW:—

I feel obliged by your consent to insert what I may deem proper to remark in reference to the article in the last number of the Review, on Mr. Dana's edition of the "Elements of International Law," and the Note thereto appended.

On mature reflection, however, I have come to the conclusion that I should best consult my own dignity, as well as most fully evince my respect for the high tribunal to which I have appealed, by not anticipating the discussions which must arise in the case of *Lawrence v. Dana et al.*, now pending in the Circuit Court of the United States in Boston. Of the views of the court we should, ere this, have been apprised, had not the argument of the motion for a preliminary injunction been delayed by the representations of the respondents, that three months were required by them to prepare counter affidavits in answer to those filed by the complainant.

I will, therefore, besides asking you to correct two or three inadvertences as to facts, into which the reviewer, no doubt unwittingly, has fallen, confine myself to reaffirming all that is alleged in my letter to the *New York Evening Post* of the 22d of August, 1866, an extract of which is given at the 628th page of the Review. These statements have been confirmed, not only by my own oath, but by the opinion of the most eminent equity jurist of the country (ex-Chancellor Walworth of New York), on whose advice, after he had examined the case, both as a lawyer and an expert, the bill was filed, and by the affidavit of a gentleman (Hon. Elisha R. Potter), who to high professional attainments adds a fuller knowledge of the literature of international law than is possessed by any other member of the American bar with whom I have been brought in contact.

It was stated *in court* by the special counsel of Mr. Dana, as a reason for delay, that "the affidavit of Mr. Potter points out three hundred cases where it is alleged that Mr. Dana has improperly made citations from the notes of Mr. Lawrence."

Your contributor is mistaken when he says that "prior to the publication of Lawrence's edition, in 1863, *Mr. Wheaton's book had always* been the official text-book of the United States government." That

“Wheaton’s Elements,” independently of my annotations, was ever used by the State Department, or by any other department of the government, is utterly untrue. It was my annotated edition that was adopted in 1855, the text of which, moreover,\*though exactly copied by Mr. Dana, differs from any published by Mr. Wheaton. The specific appropriation for *five hundred* copies, in the act of Congress of that year, was not required to enable the Department to purchase any number of copies which in the discretion of the Secretary were wanted for its use. For this there were always ample funds within his control, but it was intended, as I was assured by Mr. Marcy, to give the sanction of the government to a treatise much of which was prepared in the Department itself, the archives of which had been freely opened to me for the purpose. There was no necessity for such a course on the appearance of a second or any subsequent edition; and the applications, if any, which were made by the publishers to induce a purchase, in advance, of copies of that of 1863, were merely booksellers’ transactions, involving dollars and cents, in which I had not the slightest possible interest. In the case of the Navy Department, which has been in the habit of supplying the work to all ships of war, no specific appropriation has ever been made. At all events, if the publishers failed to make arrangements satisfactory to themselves with the State Department, it did not arise from any encouragement given to them to manufacture another book for its use. In answer to my inquiries on that subject, I have before me a communication from that Department, in which it is said that Mr. Dana’s book is *not to be patronized* by the government, and that “there has not been made any engagement with the State Department, *express or implied*, to that effect.”

I cannot but believe that the reviewer was equally mistaken in the motive which he assigns for the employment of Mr. Dana. It is stated by him, that “to rescue the honorable fame of Mr. Wheaton from this disgrace [the connection of his name with mine], and to restore value and authority to the work, that those who had the deepest concern in the matter, and who experienced the utmost mortification in the fact of the factitious weight given to Mr. Lawrence’s notes by their association with the *original text*, requested Mr. Dana to prepare a new edition of the work.” If such was the case, it was certainly a paramount duty, on the part of those who controlled the unsold portion of the edition, to cause its entire suppression.

So far from “the sale of the book being brought to a dead stop in this country,” I have the most conclusive evidence that the entire edition was exhausted within two years, not by being destroyed by the publishers, but by being actually sold by them for money; for assuredly “those

who had the deepest concern in the matter" did not, by sending the copies abroad, furnish "a weapon to the enemies of America."

Indeed, on the recent departure of my son, General Lawrence, for a foreign mission, (to which he was appointed in acknowledgment of his gallantry in leading the assaulting brigade at Fort Fisher, and as some compensation for permanent wounds received when planting the first standard of the United States on that "impregnable" fortress,) I found it absolutely impossible to purchase for him a copy of my second edition.

Nor is it reconcilable with the statement of the reviewer, that those who deemed it their duty to forget all obligations of gratitude for services, which the Note admits, were gratuitously rendered for the benefit of my friend's family, and who caused to be prepared an antidote for the poison which they had been selling here, should, at that very time, have accepted an *honorarium* of nearly \$2,000, procured for them by me from the Leipzig publisher, Brockhaus, the ostensible consideration for which was the publication, in the French language, for circulation throughout the continent of Europe, of four thousand copies of a work written, it is now alleged, "with intent to discredit the government of our country and afford aid to its enemies."

So far as regards the character of my book and the coincidence of my views with those of the author on all the questions discussed by us, I am willing to rest on Mr. Everett's review in the *North American* for January, 1856, the concluding paragraph of which I may be permitted here to recall to the notice of your readers. "Of the present edition of Mr. Wheaton's works," says Mr. Everett, "about a third part is from the pen of Mr. Lawrence, who has discharged the office of editor and commentator with signal fidelity, intelligence, and success. He not only shows himself familiar with the subject as treated in the pages of his author, but also well acquainted with the entire literature of the law of nations. Whatever is furnished by the English and Continental writers who have succeeded Mr. Wheaton, by Phillimore, Wildman, Manning, Reddie, and Polson, by Ortolan, Hautefeuille, and Foelix, is judiciously drawn upon by Mr. Lawrence. The diplomacy and legislation of our own and foreign countries are carefully examined, and, in short, the work is made in his hands — we think it not too much to say — what its lamented author would have made it, had he lived to the present time." (*North American Review*, Vol. LXXXII. p. 32.)

The opinion here expressed was confirmed, on the publication of the second edition, by a note from Mr. Everett, of the 13th of May, 1863, heretofore published.

The "notice of the author," which is no mere personal memoir, but

a diplomatic history of the period of Mr. Wheaton's public services, in which I endeavored to interweave the important incidents connected with his career, I had hoped would become a permanent memorial of the great publicist's fame, as well as of my relations towards my friend. In this expectation I am gratified by the concurring approbation of all scholars. Translated into French, and published in Germany, it has entered into the permanent literature of Europe.

As a substitute for my notice of the author, Mr. Dana has appropriated about five pages of his Preface to the author's life and career; and in this short notice it is due to the fidelity of history to state that, whenever he deviates from the memoir, he has been unfortunate in his reference to facts. Mr. Dana tells us that, "on the return of Mr. Wheaton to the United States (in 1806), he entered on the practice of his profession in New York." (Dana's Preface, p. viii.) The fact, as is shown in the "Notice" (Lawrence's Wheaton, ed. 1855, p. xxiv.; *ib.* 1863, p. xxiv.) is, that he did not go there till the close of 1812, and then he went, not as a lawyer, but as the editor of the "National Advocate." No one interested in tracing the career of the great diplomatist can ignore the influence upon it of the seven years of uninterrupted study passed in Providence, or of the three years' spent as a journalist, — an avocation to succeed in which a familiar acquaintance with the international relations of states, as well as with the law by which they are regulated, is especially required.

Compensation made in 1827 – 28 for the seizure of certain vessels at Kiel, in 1810, on the cargoes of which duties in kind had been irregularly imposed, is confounded (Dana's Preface, p. viii.) with the celebrated treaty of indemnity of March 28, 1830, for vessels captured and condemned for sailing under enemy's convoy, and which is specially remarkable from the fact that the Danish government, while acceding to the compensation demanded, continued to protest against the principle on which it was claimed. (See Lawrence's Wheaton, ed. 1855, pp. lxxiv., 603; ed. 1863, pp. xlii., lxxvii., 867, note.)

It is consoling to turn from this imperfect sketch, assumed to appear under the sanction of Mr. Wheaton's family, to the touching allusion made by the French publicist, who divides with Hautefeuille the honor of pre-eminence among the modern writers on maritime law, to our own memoir and its honored subject. I have this moment received from Paris the last edition of Ortolan's "Diplomacy of the Sea," my citations having been made from previous editions.

If Hautefeuille, from his contending for what the law ought to be, as opposed to general usage, is to be deemed a speculative theorist, it cannot be denied that the treatise of Ortolan is eminently practi-

cal. His position, moreover, as a disciple of Wheaton, whose claims to the title were recognized by our great master during his life, makes him an authority beyond all cavil as to whatever relates to the works of Wheaton. I cannot therefore more appropriately close this communication than by translating what he says as to the editions of the Elements which have appeared since the time of the author: "The high reputation and universal authority acquired by the 'Elements of International Law' may well render it unnecessary for us to speak of it. Since death has removed Mr. Wheaton from the public affairs of his country, and deprived science of his labors, his compatriot, Mr. William Beach Lawrence, has published two successive editions of this last work, in which he has made, in the form of notes and of an Appendix, numerous additions. Veritable annals of the most important facts of the present epoch, these additions are most instructive in that they make us acquainted with the opinion of the many recent authors and statesmen who have discussed all the points which have been in controversy."

Ortolan thus rescues my "labor of love" from the *index expurgatorius* to which the publishers would consign it: "As an introduction to his editions," he says, "Mr. Lawrence has written an extended notice of the life and works of the American publicist and diplomatist. It is with a religious sentiment of profound veneration for the memory of Mr. Wheaton that we have read this notice. We are of the number of those to whom Mr. Lawrence might have alluded, in speaking of him whose public and scientific career he traces for us. 'Those who are acquiring from his labors the fundamental principles of the science of which he was not only the teacher, but which he successfully applied to the service of his country, may well desire a personal acquaintance with the author.' It was by the study of Mr. Wheaton's works, combined with those of publicists who preceded him, that we were initiated in a knowledge of the general principles of the law of nations, when we were preparing to write our special treatise on the International Law of the Sea. We revert also with pleasure to our presentation to Mr. Wheaton during his sojourn in Paris in 1845, and recall with satisfaction the honor which he conferred on us by writing at that period a notice of our work, which was inserted in the *Revue de Droit Français et Étranger*, 1845." (Ortolan, *Règles internationales et diplomatie de la Mer*, 4<sup>ème</sup> édition. Paris 1864, Tom. I. p. 75.)

W. B. LAWRENCE.

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